A GUIDE

To the KNOWLEDGE of the

RIGHTS and PRIVILEGES

OF

ENGLISHMEN.

Containing COMMENTARIES on

I. King John's MAGNA CHARTA;
II. Henry III's MAGNA CHARTA;
III. The BISHOPS CURSES againſt the Breakers of this Charter;
IV. A STATUTE declaring what Crimes ſhall be adjudged Treaſon;
V. The PETITION OF RIGHT;
VI. The HABEAS CORPUS ACT;
VII. The BILL OF RIGHTS; and
VIII. The ACT OF SETTLEMENT:

In which the Whole of the Text is preſerved.

ALSO,

The Security of *Engliſhmens* Lives; or, the Truſt, Power, and Duty of the GRAND JURIES of *ENGLAND*, by John Somers, Baron

LONDON,
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GUIDE

To the Rivers, Lakes and Railroads

OF

ENGLISHMEN.

Rec. Mar. 5, 1901.

TO THE

PUBLIC.

AS the *Engliſh* Conſtitution was founded in Liberty, by our great and generous Fore-fathers, who took Care to have ſuch Laws eſtabliſhed for the good Government of the Kingdom, as ſecured every Man in the quiet Poſſeſſion of his Rights, Liberties and Properties; I think it incumbent upon us, who are their Succeſſors, to be very watchful over ſo precious a Jewel, and to take Care that ſo glorious an Inheritance may deſcend whole, and intire to our Poſterity.

Since the Foundation of our Government, many have been the Attempts to break in upon its Conſtitution; and with various Succeſs. More than once it has, ſeemingly, been quite overturned and deſtroyed, either by the open Attack of Violence, or by the more ſure Ways of undermining, ſapping, and corrupting; and ſometimes by all together: But ſuch has been our Happineſs, that divine Providence has, hitherto, been ſo benign, as upon all ſuch Occa-

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ſions, to ſtretch forth the Almighty Arm in our Defence, never failing to animate ſome great and good Men to undertake the Recovery of our Civil and Religious Rights; and, as Blazing-Stars do the Firmament, to enlighten the Minds of the People, and provoke them to a noble Imitation of their Virtue and Courage.

One of which was the great Author of *The Security of Engliſhmens Lives*; who, at a Time when Deſpotiſm had taken long Strides towards, and very near had broke down all the Fences of Liberty, ſent forth this ſmall Treatiſe into the World; which together with ſome other excellent Things publiſhed about the ſame Time, convinced the Generality of the People of the inеſtimable Value of thoſe Birth-Rights, which were then going to be taken from them; and raiſed that Spirit throughout the Kingdom, which was at laſt productive of the great and happy REVOLUTION; which reſtored our antient Rights and Privileges, and confirmed them to us ſo ſtrongly, that nothing leſs than a general Luxury and Depravity of Manners, and their natural and inſeparable Concomitant, an univerſal Corruption, can ever deprive us of them.

One of the great Outworks of Liberty is a *Grand Jury*; which by our old Conſtitution, was the principal Guard of every Man's Life, Liberty and Eſtate; for by our own Laws no Subject of this Realm could be brought to the Bar of Juſtice, without having his Caſe firſt inquired into by a Grand Jury; who are in the firſt Place

to

to examine whether the Charge be in its own Nature criminal or indictable; and ſecondly, whether the Perſon ſo charged be guilty of the Fact for which he ſtands accuſed. If in the firſt Inſtance they do not find the Charge to be in its own Nature criminal or indictable; then they have nothing more to do than to diſcharge the Bill as inſufficient; and in the ſecond Inſtance, if the Accuſation be not properly ſupported by Evidence, they muſt by their Oaths throw out the Indictment, to the great Relief of the unhappy Perſon ſo accuſed: And that this is a principal Part of a Grand Jury's Office, appears not only from legal Reaſon, but by expreſs Statutes, *viz.* 25 *Edw.* 3, 4. and 42 *Edw.* 3, 3. which ſay, "That for preventing Miſchiefs "done by FALSE ACCUSERS, none ſhall be "put to anſwer, unleſs it be by Indictment, or "Preſentment of good and lawful Men of the "ſame Neighbourhood where ſuch Deeds be "done;" which can be meant of no other than a Grand Jury.

But alas! how often has this well-contrived Barrier of Liberty been broke in upon; by the unconſtitutional Method of bringing or filing Informations in the Court of King's-Bench, and obliging many of the beſt Subjects of this Realm, to anſwer at that or ſome other awful Tribunal, for no other Crimes but bravely endeavouring to ſupport the Rights and Privileges of *Engliſhmen*, without ſo much as ſuffering a *Grand Jury* to inquire whether the Caſe be criminal or not?

This unconſtitutional Method of bringing Informations, and charging the Subjects of this Realm, by the crafty and deviliſh way of Innuendo, with the moſt flagitious Crimes, deſerves the ſtricteſt Attention of the Legiſlature, and calls aloud upon the Great Council of the Nation for Redreſs: But until that can be effected, it ſhould be recommended to all Petty Juries to find no Man Guilty that does not legally and regularly come before them by a Bill of Indictment, or Preſentment found by a Grand Jury.

In the SEQUEL of *Advice to Poſterity*, you will find the Reprinting this little Treatiſe ſtrongly recommended, together with Three of the *eſſential Laws* mentioned in the Title Page; to which are added IN THIS EDITION, the *original Great Charter*, made and confirmed by K. *John* at *Runningmede* the 15th Day of June in the 17th Year of his Reign; *The Petition of Right* paſſed in the Reign of King *Charles* I, in 1628, *The Habeas Corpus Act*; all which ought to be the daily Study of every Man in the Kingdom, whether he be Rich or Poor, in high or low Station; and, to uſe the Words of the worthy Author of the ſaid SEQUEL, "As *Moſes* of old exhorted the "Children of *Iſrael* concerning the Laws of "GOD, delivered to that Nation, ſo I, with all "the Warmth and Zeal of a truly *Engliſh* "Heart, exhort you concerning the Precepts of "Chriſtianity, the Liberties and Laws of *Eng-* "*land*, eſpecially the *eſſential Laws* above men-

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" tioned, To teach them to thy Children, and
" talk of them when thou ſitteſt in thine Houſe,
" and when thou walkeſt by the Way, and
" when thou lieſt down, and when thou riſeſt
" up. Thou ſhalt bind them for a Sign upon
" thine Hand, and they ſhall be as Frontlets
" between thine Eyes, and thou ſhalt write
" them upon the Poſts of thine Houſe, and on
" thy Gates." *Deut.* vi. 7, 8, 9.

And as the Preſerving of thoſe Laws already made, and the providing others for the Security of our ineſtimable Frame of Government, depends upon the Choice of a free and independent HOUSE of COMMONS, the Reader is preſented with an EXHORTATION to the Chriſtian and independent *Clergy*, the *Gentry*, *Freeholders*, and other *Electors* of Members to ſerve in Parliament for *Great Britain*, preſſing them all, eſpecially the *Clergy*, in their reſpective Stations, immediately to uſe their utmoſt Endeavours to give a Check to that Torrent of Perjury, Bribery and Corruption, which ſeems to have overflowed the Land, and will certainly deſtroy the Conſtitution of *Britain*, if not timely remedied by putting in Execution what is ſo earneſtly recommended by the Author; who out of a moſt paſſionate Regard for his Country, has favoured the Editor with the ſaid *Exhortation* to be inſerted in the following Work, in hopes thereby, to be a Means of opening the Eyes of the People in general, that at the next *General Election* of Members to ſerve in Parliament, they may be

able to discern the Difference between Good and Evil, and that the corrupting Hands of Ministerial Power, are no other than the beguiling Agents of the infernal Monarch of the dark Regions of Hell, to seduce them from the Duty they owe THEIR GOD, THEIR KING, THEIR COUNTRY AND THEMSELVES; and make their Memories hateful to Posterity; who sinking under the galling Yoke of Slavery, may Curse their Fate for being descended from such Wicked, Venal, and Pusillanimous Progenitors.

A

GUIDE

To the KNOWLEDGE of the

RIGHTS and PRIVILEGES

OF

ENGLISHMEN, &c.

BY the old Conſtitution of *England*, the Law ſaith an Author of the laſt Century, is both the Meaſure and the Bond of every Subject's Duty and Allegiance; each Man having a fixed fundamental Right born with him, as to Freedom of his Perſon and Property in his Eſtate, which he cannot be deprived of, but either by his Conſent, or ſome Crime, for which the Law has impoſed ſuch a Penalty, or Forfeiture. For all our Kings take a ſolemn Oath to *Obſerve, and cauſe all the Laws to be kept*; and likewſe all our Judges take an Oath, when they enter into their high and ſacred Office, wherein amongſt other Things they ſwear, *to do equal Law and Right to all the King's Subjects, rich and poor, and not to delay any Perſon of common Right for*

the Letters of the King, or of any other Perſon, or for any other Cauſe: But if any ſuch Letters come to them, they ſhall proceed to do the Law, the ſame Letters notwithſtanding.

This glorious Privilege may be truly ſaid to be the Birth-right of every *Engliſhman*, as it was originally interwoven in our wiſe and happy Frame of Government, brought over into this Kingdom by our *Saxon* Anceſtors, and thereby became the common Law of the Land. A Privilege not to exempt from the Law; but to be freed in Perſon and Eſtate from arbitrary Violence and Oppreſſion: *A greater Inheritance* (ſaith Judge *Coke*) *is derived to every one of us from our Laws, than from our Parents*; for without the former, What would the latter ſignify? And this Birth-right of *Engliſhmen* ſhines moſt conſpicuouſly in two Things:

1*ſt*, Parliaments; 2*dly* Juries.

By the firſt the Subject has a ſhare by his choſen Repreſentatives in the legiſlative (or law-making) Power; for no new Laws bind the People of England, but ſuch as are by common Conſent agreed on in that great Council. Therefore it is of the utmoſt Conſequence to the People of this Land, who it is they chuſe to repreſent them: For a weak, venal, and hireling Houſe of Commons may (and very likely would) by coming into the Meaſures of a wicked Miniſtry, undo in one Seſſions, all that has been done

done for Ages paſt by the moſt conſummate and wiſeſt Heads for the ſecurity of the Lives, Liberties and Properties of *Engliſhmen*; as did that ſcandalous and profligate ſet of Miſcreants in the Year 1397, who at the Inſtigation of King *Richard* the Second, and his abandoned Miniſters, at one Vote, impudently repealed all the good and wholeſome Laws made by their Predeceſſors, and intirely ſubverted our Conſtitution, by declaring the King to be above the Laws; for thereby the limited Monarchy of *England* was changed into an abſolute one; and the Lives, Liberties, and Eſtates of all the free-born Subjects of this Realm, fell, at once, to the Diſpoſal of the arbitrary Will of the King, and his evil and wicked Councellors, of which ſome of the braveſt and beſt Men in the Land very ſoon felt the dire Effect. Therefore it is plain of what great Conſequence it is to Liberty, the having a juſt, faithful, and true Repreſentative of the People; and it is earneſtly recommended to all the Electors in the Kingdom, into whoſe Hands this little Treatiſe may come, as they will anſwer it to God and their Country, and avoid the Curſes of their Children's Children's Children, down to many Generations, to be very careful in the Choice of Members to ſerve in Parliament; for into their Hands is immediately intruſted, every Thing that is dear, every Thing that is valuable to us and to our Poſterity. The great Lord Treaſurer *Burleigh* has long ago ſaid, which he frequently delivered as a

Maxim, or perhaps as a Prophecy, *That England can hardly be ruined, unleſs it be by her own Parliament*; foreſeeing, no Doubt of it, that other illegal Opreſſions, as being brought about by Violence, might, in all Probability, by Violence be ſhaken off again in Time; whereas in a parliamentary Way, we are undone by a Law that (probably) can never be reverſed, but by a national Convulſion; becauſe the Parties, for whoſe Advantage that Law was made, will never agree to the repealing of it. Such is the happy Frame of our Conſtitution, ſo prudently and ſo ſtrongly have our Fore-fathers ſecured Property and Liberty, (reſcued by Inches out of the Hands of encroaching Violence) that we cannot be enſlaved but with Chains of our own forging: For as we are never undone till we are undone by Law, ſo we can never be undone by a Law till we chooſe the undoing Law-makers; and then may not our Enemies add *Scorn* to their Cruelty, and pretend Juſtice for both, when they can plead, they had never trampled on our Heads, our Rights and Liberties, had we not meanly laid them at their Feet.

By the ſecond, that is Juries, he has a Share, in the executive Part of the Law; no Cauſes being tried, nor any Man adjudged to loſe Life, Member, or Eſtate, but upon the Verdict of his Peers (or Equals) his Neighbours, and of his own Condition: Theſe two grand *Pillars* of *Engliſh* Liberty are the fundamental vital Privileges, whereby we have been preſerved more free

free and happy than any other People in the World; for whoever ſhall Deſign to impair, pervert, or undermine either of theſe, will ſtrike at the very Conſtitution of our Government, and ought to be proſecuted and puniſhed with the utmoſt Zeal and Vigour. To cut down the Banks and let in the Sea, or poiſon all the Springs and Rivers in the Kingdom, could not be a greater Miſchief; for this would only affect the preſent Age; but the other will ruin and enſlave all our Poſterity.

So great a Regard had our brave Anceſtors to theſe ineſtimable Privileges, that they ſpared neither Blood nor Treaſure in their Defence, whenever invaded; as they too often were by ſome of our Princes puſhed on by their voracious and evil-minded Miniſters, who, graſping after lawleſs Power, pulled down all the Fences of Liberty, and broke in upon the Conſtitution to that Degree, that the Lives, Liberties, and Properties of the free-born Subjects of this Realm were every Hour in Jeopardy, and frequently fell Sacrifices to regal or miniſterial Vengeance. Then it was that our generous Fore-fathers nobly aſſociated themſelves in Defence of their native legal Rights, and made an Offering of the beſt and choiceſt Blood in the Kingdom to the Shrine of Liberty, that we their Poſterity might be free and happy. To them and the glorious Struggles they made with Power, we owe the Eſtabliſhment of thoſe Laws which are now the Baſis of *Engliſh* Liberty; not but thoſe Rights

and Privileges, therein expreſſed, were inherent in the *Engliſh* Conſtitution, before they were reduced into Form of Law; but as they were ſo often encroached upon by the Enemies of Liberty, our noble Progenitors found it neceſſary to have them put into the Order they are now in, that they may be ſtanding Records to Poſterity of thoſe Rights and Privileges to which *Engliſhmen* are intitled by their Birth.

Therefore the ſureſt Guide to the Knowledge of *Engliſh* Liberty are thoſe very Laws, in which the fundamental Rights and Privileges of *Engliſhmen* are contained, The firſt of which is,

MAGNA CHARTA, or the GREAT CHARTER, which was firſt made and confirmed by King *John*, as alſo another in the ninth Year of King *Henry* the Third, and ratified by King *Edward* the Firſt, in the eight and twentieth Year of his Reign. Witneſſed by Archbiſhops, Biſhops, Earls, Barons, Knights, Freeholders, &c. The ſecond is,

The *Habeas Corpus Act*, or an Act for the better Security of the Liberty of the Subject, and for Prevention of Impriſonment beyond the Seas, made in the thirty-firſt Year of King *Charles* the Second. The Third is,

The *Bill of Rights*, or an Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown, made in the firſt Year of King *William* and Queen *Mary*, and on the ſixteenth Day of *December*, 1689, received the Royal Aſſent. The fourth is,

The

The *Act of Settlement*, or an Act for the farther Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject, made the twelfth and thirteenth of King *William* the Third.

Two other excellent Laws are here inſerted, which particularly regard our Liberties, namely, A Statute made the twenty-fifth of *Edward* the Third, declaring what *Offences ſhall be adjudged Treaſon*, and the *Petition of Right*, paſſed in the Third Year of the Reign of *Charles* the Firſt, in 1628. There are ſome others, but as they are inconſiſtent with the Editor's deſigned Brevity, they are omitted; eſpecially as the firſt above-mentioned may be ſaid, if well conſidered, to comprehend the whole.

The firſt of theſe fundamental Laws ſtands foremoſt in our Statute Books, and as it is the Foundation of all our other Laws, is here firſt preſented to the Reader. It is called *Magna Charta* or the Great Charter, not in Reſpect of its Bulk, but in Regard of the great Importance and Weight of the Matters therein contained. It is alſo ſtiled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and my Lord *Coke* ſaith, upon good Reaſon, it is ſo called from the Effect, which is, that it preſerves the People free. There is no doubt but there were Acts of Parliament before this, but there are none of them extant at this Time; by which one would think, that when this great Law was made, all other Laws became obſolete

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and uſeleſs, the whole Body of them being comprized in this one.

It will not be amiſs in this Place to obſerve, that though the King in the Preamble ſtiles it a Charter, yet (as my Lord *Coke* very well obſerves) it appears to have paſſed in Parliament; and therefore the Act of the People as well as the King; for, (as you will ſee in the thirty-ſeventh Chapter) there was a fifteenth granted to the King, by the Biſhops, Earls, Barons, Free-tenants and People, which could be no other than a Parliament; nor was it unuſual in thoſe Days, to have Acts of Parliament in the Form of a Charter; as may be ſeen in the Prince's Caſe. Co. Rep. L. p. 8.

In the ſame Preamble, it is likewiſe ſaid, that the King hath given and granted theſe Liberties; which muſt not be underſtood as meer Emanations of Royal Grace and Favour, or new Privileges granted which the People had not a Right unto before: for all our Hiſtorians tell us, that our brave Anceſtors did Challenge them as of Right to them belonging, and obliged their Kings to an Eſtabliſhment of them; and the Lawyers all know that this Charter is only declaratory of the principal Grounds of the fundamental Laws and Liberties of *England*. No new Freedom is here granted, but a Reſtitution of ſuch Privileges as had been illegally taken from the People before, and ſo confirmed to them, as to prevent their being uſurped, or encroached upon by any Power whatſoever for the future;

future; which is evident from the Words, Rights and Liberties being ſo often mentioned in this Charter: even the firſt Chapter begins with a Confirmation of them, which could not have been, if the People had not been in Poſſeſſion of them before.

Never was any Act paſſed with greater Solemnity. So zealous were our Anceſtors to preſerve their Liberties from all Encroachments, that they employed all the Strength of human Policy and religious Obligations to ſecure them entire and inviolable; the Biſhops pronounced Sentence of Excommunication againſt all the Breakers of it, and by Charter in the thirty-fifth Year of *Edward* the Firſt, this Charter was again ſolemnly confirmed, together with *Charta de Foreſta*, in the fourth Chapter of which all the Archbiſhops and Biſhops were ordered to pronounce the dreadful Sentence of Excommunication againſt all thoſe, that by Word, Deed or *Council*, do contrary to the aforeſaid Charters, or in any Point break or undo them; and that the ſaid Curſe be twice a Year denounced and publiſhed by the Prelates aforeſaid.

This was ſurely fixing the Stamp of Perpetuity to this excellent Law; for not only any one Man, but even King, Lords, and Commons in their collective Body, could not break through it, without falling under this heavy and dreadful Sentence; and as this Act is now as much in Force as ever and was confirmed by the Act of Settlement, why my Lords the Biſhops, our preſent

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preſent reverend Prelates, ſhould not hold themſelves obliged to accurſe the Infringers of it twice a Year, is not very eaſy to conceive, unleſs it be for the ſame Reaſon, that theſe Curſes are left out of the late Editions of the Statute Books; they may be ſeen at large in thoſe printed in the Reign of Queen *Elizabeth*. However the Editor has thought proper to inſert them here, that all People, into whoſe Hands this little Book ſhall come, may ſee what heavy Judgments they lay themſelves under, if they preſume or endeavour to break through, or take off the Force of any part of this fundamental Law. Oh! that the ſame Proviſion had been made to ſome Laws of a much later Date. Happy, thrice happy it would have been for this poor divided Kingdom.

In the next Place it may not be improper to give ſome Account of the Occaſion of this Charter. Therefore be pleaſed to obſerve, that our Anceſtors, the *Saxons*, had, with an equal Poiſe and Temperament, very wiſely contrived their Government, made excellent Proviſions for their Liberties, and to preſerve the People from Oppreſſion; and though *William* the *Norman* (vulgarly called the Conqueror, for in truth he was not ſo) made himſelf Maſter of the Land by killing *Harold* the Uſurper, and routing his Army, yet he claimed the Crown as his Right, and in conſequence thereof was admitted to it by Compact, and took an Oath to obſerve the Laws and Cuſtoms of the Realm. But in truth,

truth, he did not obſerve that Oath ſo well as he ought to have done; neither did *many* of his Succeſſors, for *William Rufus*, King *Stephen*, *Henry* the Firſt, *Richard* the Firſt, and King *John*, eſpecially the latter, made ſuch frequent Encroachments upon the Liberties of the People, and uſed ſo many illegal Devices to drain their Purſes, that at laſt wearied out with intolerable Oppreſſions, they reſolved to oblige the King to reſtore their Liberties, and to confirm the ſame to them and their Poſterity, which King *John* did in *Runny* or *Running-Mead* between *Stains* and *Windſor*, by two Charters, the one called the Charter of Liberties, the ſame with that firſt recited, and the other the Charter of the Foreſt; Copies of which he ſent into every County, and commanded the Sheriffs, *&c.* to ſee them fulfilled.

But alas! he was very ſoon carried away by the Voice of evil Counſellors, and, regardleſs of the ſolemn Engagement he had made with his People, began to violate them as much as ever, which brought unſpeakable Miſeries upon himſelf and Kingdom, which continued to the End of his Reign.

The Son and Succeſſor of King *John* was *Henry* the Third, who, in the ninth Year of his Reign, renewed and confirmed the ſaid Charters as is before related; but within two Years afterwards, at a Council held at *Oxford*, he cancelled them both with his own Hands, by the pernicious Advice of his Favourites, particularly *Hubert*

bert de Burgh, who was the firſt Witneſs, of all the temporal Lords, to both the ſaid Charters, and had been of the greateſt Service in obtaining them; but Ambition and Covetouſneſs getting the better of his Integrity, he baſely betrayed his Country by giving this diabolical Counſel, for the ſake of obtaining Honour and Preferment. He was firſt made Lord Chief Juſtice, and afterwards created Earl of *Kent*, the higheſt Dignity that in thoſe Days a Subject could enjoy; but ſoon, very ſoon, the Biſhops Curſe overtaking him, he fell into his Maſter's heavy Diſpleaſure, and after many fearful and miſerable Troubles, he was juſtly and legally ſentenced by his Peers in an open Parliament, and juſtly degraded of that Dignity, which he had ſo unjuſtly obtained, by his wickedly and traiterouſly adviſing the cancelling of *Magna Charta* and *Charta de Foreſta*. And how great would be our Happineſs, if all future Miniſters would take Warning by him?

To *Magna Charta* is ſubjoined the Biſhops Curſe, with my Lord *Coke*'s Obſervations on the twenty-ninth Chapter, which is ſo eſſential to the thoroughly underſtanding of it, and to ſhew the great Uſe it is of to the Kingdom, the Editor could not have excuſed himſelf, if he had not alſo inſerted them. To which is added a Confirmation of the ſaid Charter, made the thirty-fifth of *Edward* the Firſt, with the Biſhops Curſe agreeable to the fourth Chapter of the ſaid Confirmation, fit for any Proteſtant Biſhop to pronounce.

THE

THE CHARTER of LIBERTIES OR, THE GREAT CHARTER:

Granted by King JOHN*, to his Subjects, in the Year 1255.

of Hen. IV. c. 17. 2 Inst. 1 Edw. III. c. 1216

JOHN by the Grace of God, King of *England*, Lord of *Ireland*, Duke of *Normandy* and *Aquitain*, and Earl of *Anjou*: to the Archbiſhops, Biſhops, Abbots, Earls, Barons, Juſticiaries, Foreſters, Sheriffs, Governors, Officers, and to all Bailiffs and other his faithful Subjects, greeting. Know ye, that we †, in the Preſence of God, and for the Health of our Soul, and the Souls of our Anceſtors and

* This Charter, being the Original was omitted, in the firſt Edition of this Work.

† King *John* was the firſt of the Kings of *England* (as Sir *Edward Coke* obſerves) that in his Grants wrote in the Plural Number: other Kings before him wrote in the Singular Number; they uſed *Ego*, I; and King *John*, and all the Kings after him, *Nos*, We. 2d Inſtitute, p 2.

Heirs,

Heirs, to the Honour of God, and the Exaltation of holy Church, and Amendment of our Kingdom, by the Advice of our venerable Fathers, *Stephen*, Archbiſhop of *Canterbury*, Primate of all *England*, and Cardinal of the holy *Roman* Church; *Henry*, Archbiſhop of *Dublin*, *William* Biſhop of *London*, *Peter* of *Winchester*, *Joſcelin* of *Bath* and *Glaſtonbury*, *Hugh* of *Lincoln*, *Walter* of *Worceſter*, *William* of *Coventry*, *Benedict* of *Rocheſter*, Biſhops; and Maſter *Pandulph* the Pope's Subdeacon and Servant, Brother *Aymeric*, Maſter of the Temple in *England*; and the noble Perſons *William Mareſcall*, Earl of *Pembroke*, *William* Earl of *Saliſbury*, *William* Earl of *Warren*, *William* Earl of *Arundel*, *Allan de Galloway*, Conſtable of *Scotland*, *Warin Fitzgerald*, *Peter Fitzherbert*, and *Hubert de Burgh*, Seneſchal of *Poictou*, *Hugo de Nevile*, *Matthew Fitzherbert*, *Thomas Baſſet*, *Allan Baſſet*, *Philip de Albiney*, *Robert de Roppele*, *John Mareſcall*, *John Fitzhugh*, and others our Liegemen; have in the firſt Place granted to God, and by this our preſent Charter, confirmed for us and our Heirs for ever,

I. That the Church of *England* ſhall be free*, and enjoy her whole Rights and Liberties

* That is, all Eccleſiaſtical Perſons within the Realm, their poſſeſſions and Goods ſhall be freed from all unjuſt Exactions and Oppreſſions; but notwithſtanding ſhall yield all lawful Duties, either to the King, or to any of his Subjects. *Coke* ibid.

inviolable.

nviolable. [† And we will have them ſo to be obſerved, which appears from hence, that the Freedom of Elections, which is reckoned moſt neceſſary for the Church of *England*, of our own free Will and Pleaſure we have granted and confirmed by our Charter, and obtained the Confirmation thereof from Pope *Innocent* the Third, before the Diſcord between us and our Barons, which Charter we ſhall obſerve, and do will it to be faithfully obſerved by our Heirs for ever.]

II. We have alſo granted to all the Freemen of our Kingdom, for us and our Heirs for ever, all the under written Liberties, to have and to hold, them and their Heirs, of us and our Heirs.

III. If any of our Earls §, or Barons, or Others who hold of us in Chief by Military Service, ſhall Die, and at the Time of his Death his Heir is of full Age, and owes a

† No new Rights were hereby given unto Eccleſiaſtical Perſons, but ſuch as they had before, were confirmed unto them. *Coke*, p. 3.

§ There was never a Duke, Marquis, or Viſcount then in *England*. The firſt Duke was *Edward* the Black Prince, who was created Duke of *Cornwall*, in 11 Edw. III. *Robert de Vere*, Earl of *Oxford*, was created Marquis of *Dublin* in 8 *Rich.* II. The firſt Viſcount on record, and that ſat in Parliament by that Name, was *John* Viſcount *Beaumont*, created 18 *Henry* VI. *Coke*, p. 5. For an account of the Titles of Earls and Barons, ſee *Selden*'s Titles of Honour.

Relief,

Relief, he ſhall have his Inheritance by the ancient Relief *, that is to ſay, the Heir or Heirs of an Earl, for a whole Earl's Barony, by a Hundred Pounds: the Heir or Heirs of a Baron, for a whole Barony, by an Hundred Marks †; the Heir or Heirs of a Knight, for a whole Knight's Fee, by an Hundred Shillings at moſt; and he that oweth leſs ſhall give leſs, according to the ancient Cuſtom of Fees.

* For the underſtanding of this Article, it muſt be obſerved, that when any of the King's Tenants in Chief died, the King as Guardian to his Heir, ſeized his Lands; which remained in his Hands, till the Heir was of Age. But when the Heir came to be twenty-one Years old, he could ſue to have his Eſtate, upon doing Homage to the King, and paying a certain Compoſition called Relief, which at firſt was ſettled, according to every Man's Degree, from an Earl to a Farmer. But it ſeems that ſometimes before King *John*'s Reign, there had been an heavy Encroachment of an uncertain Relief, at Will and Pleaſure, which, under a fair Term, was called *Rationable Relevium*; a reaſonable Relief. This Clauſe therefore ſets this Matter upon its antient footing. See Sir *Edw. Coke*'s 2d Inſt. p. 7.

† The *Cottonian* Copy has a Hundred Pounds; which ſeems to be a Miſtake. For the antient Relief of an Earldom, a Barony, and the Living of a Knight, was the fourth part of the yearly Value of them. Now, the yearly Value of a Barony was to conſiſt of thirteen Knight's Fees, and a Quarter, which, by juſt account, amounted to four Hundred Marks a Year, therefore his Relief was a Hundred Marks, and not a Hundred Pounds. See *Coke*, ibid. p. 7.

IV. But

IV. But if the Heir of any ſuch be under Age, and ſhall be in ‡ Ward (1) when he comes of Age, he ſhall have his Inheritance without Relief or without Fine (2).

V. The Warden of the Land of ſuch Heir, who ſhall be under Age, ſhall take of the Land of ſuch Heir only reaſonable Iſſues, reaſonable Cuſtoms, and reaſonable Services †; and that without Deſtruction or Waſte of the Men and Things (3): and if we commit the Guardianſhip of thoſe Lands to the Sheriff, or any other, who is anſwerable to us for the Iſſues of the

(1) [His Lord ſhall not have the Wardſhip of him, nor his Land, before he hath received his Homage; and after ſuch Heir ſhall be in Ward, and ſhall attain to the Age of one and twenty Years.]

(2) [Yet ſo, that if he be made a Knight * while he is under Age, nevertheleſs the Lands ſhall remain in the Cuſtody of the Lord, until the aforeſaid Time.]

(3) [Upon the Eſtate.]

‡ As long as the Heirs of the King's Tenants in Chief were under Age, they were ſaid to be in Ward, but this Wardſhip was taken away by the Statute 12. *Car.* II. c. 24.

* By being made a Knight, the Heir was out of Ward as to his Body; but his Land remained in the Cuſtody of the Lord, as is ſaid in this Article. See *Coke*, p. 11.

† By Iſſues, are meant, the Rents and Profits ariſing out, or coming of the Lands or Tenements of the Ward. By Cuſtoms, things due by Cuſtom or Preſcription, and appendant to the Lands or Tenements in Ward; as Advowſons, Commons, Stray, &c. alſo Fines of Tenants by Copy or Court Roll. By Services, the Drudgery and Labour due from Copy-holders to their Lords. See *Coke*, p. 12, 13.

Land,

Land, and he make Deſtruction and Waſte upon the Ward Lands, we will compel him to give Satisfaction, and the Land ſhall be committed to two lawful and diſcreet Tenants of that Fee, who ſhall be anſwerable for the Iſſues to us, or to him whom we ſhall aſſign. And if we give or ſell the Wardſhip of any ſuch Lands to any one, and he makes Deſtruction or Waſte upon them, he ſhall loſe the Wardſhip, which ſhall be committed to two lawful and diſcreet Tenants of that Fee, who ſhall in like Manner be anſwerable to us, as hath been ſaid.

VI. But the Warden, ſo long as he hath the Wardſhip of the Land, ſhall keep up and maintain the Houſes, Parks, Warrens, Ponds, Mills, and other Things pertaining to the Land, out of the Iſſues of the ſame Land; and ſhall reſtore to the Heir, when he comes of full Age, his whole Land ſtocked with Ploughs and Carriages, according as the Time of Wainage ſhall require, and the Iſſues of the Land can reaſonably bear (4).

VII. Heirs ſhall be married without Diſparagement ‡, [ſo as that before Matrimony is

(4) [And all theſe Things ſhall be obſerved in the Cuſtodies of vacant Biſhopricks, Abbies, Priories, Churches and Dignities, which appertain to us; except that theſe Lordſhips are not to be ſold.]

‡ That is, according to their Rank, &c. Diſparagement in a legal Senſe, was uſed for matching an Heir in Marriage under his Degree, or againſt Decency. *Coke Littl.* 107. *Jacob.*

contracted

ntracted, thoſe who are neareſt to the Heir in lood be made acquainted with it.]

VIII. A Widow, after the Death of her uſband, ſhall forthwith, and without any ifficulty have her Marriage *, and her Inheri-nce; nor ſhall ſhe give any Thing for her ower, or her Marriage, or her Inheritance, hich her Huſband and ſhe held at the Day of s Death: and ſhe may remain in the capital eſſuage or Manſion Houſe of her Huſband, orty Days after his Death; within which Term er Dower ſhall be aſſigned (5).

IX. No Widow ſhall be deſtrained ‖ to marry erſelf ſo long as ſhe has a Mind to live without Huſband. But yet ſhe ſhall give Security

(5) [If it was not aſſigned before, or unleſs the Houſe ſhall be a Caſtle; and if ſhe departs from the Caſtle, there ſhall forthwith be provided for her a ompleat Houſe, in which ſhe may decently dwell, ill her Dower be to her aſſigned, as hath been ſaid; nd ſhe ſhall in the mean Time have her reaſonable Eſtover (i. e. competent Maintenance) out of the common (Revenue.) And there ſhall be aſſigned to her for her Dower, the third Part of all her Huſband's Lands which were his in his Life Time, except ſhe were endowed with leſs at the Church Door.]

* *Maritagium*, that is, ſhall have Liberty to marry where ſhe will. It appears by *Bracton*, that a Woman, who was an Heir, could not marry, without the Leave and Conſent of the Lords of whom her Eſtates were held; otherwiſe ſhe forfeited them. *Bract.* l. II. p. 88. *Coke*, p. 16.

‖ Compelled by ſeizing her Goods.

that

that ſhe will not marry without our Aſſent, if ſhe holds of us; or without the Conſent of the Lord of whom ſhe holds, if ſhe holds of another.

X. Neither we nor our Bailiffs † ſhall ſeize any Land * or Rent for any Debt, ſo long as there are Chattels of the Debtor's upon the Premiſes, ſufficient to pay the Debt (6). Nor ſhall the Sureties of the Debtor be deſtrained, ſo long as the principal Debtor is ſufficient for the Payment of the Debt.

XI. And if the principal Debtor fail in the Payment of the Debt, not having wherewithal to diſcharge it (7), then the Sureties ſhall anſwer the Debt, and if they will, they ſhall have the Lands and Rents of the Debtor, until they be ſatisfied for the Debt which they paid for him, unleſs the principal Debtor can ſhow himſelf acquitted thereof, againſt the ſaid Sureties.

XII. [If any one have borrowed any Thing of the Jews more or leſs, and Dies before the Debt be ſatisfied, there ſhall be no Intereſt paid for that Debt, ſo long as the Heir is under Age, of

(6) [And that the Debtor is ready to ſatisfy it.]
(7) [Or will not Diſcharge it when he is able.]

† In this Place the Sheriff and his under Bailiffs are intended and meant, ſays Sir *Edward Coke*, p. 19.

* By Order of the Common Law, the King for his debt had Execution of the Body, Lands, and Goods of the Debtor; ſo that this is an Act of Grace, reſtraining the Power the King had before. *Coke*, ibid.

whom-

whomſoever he may hold: and if the Debt falls into our Hands, we will take only the Chattel mentioned in the Charter or Inſtrument.]

XIII. [And if any one die indebted to the Jews, his Wife ſhall have her Dower, and pay nothing of that Debt; and if the deceaſed left Children under Age, they ſhall have Neceſſaries provided for them according to the Tenement (or real Eſtate) of the deceaſed, and out of the reſidue the Debt ſhall be paid; ſaving however the Service of the Lords. In like Manner let it be with the Debts due to other Perſons than Jews.]

XIV. No Scutage * or Aid ſhall be impoſed in our Kingdom, unleſs by the Common Council of our Kingdom, except to redeem our Perſon, and to make our eldeſt Son a Knight, and once to marry our eldeſt Daughter; and for this there ſhall only be paid a reaſonable Aid.

XV. [In like Manner it ſhall be concerning the Aids of the City of *London*; and] the City of *London* ſhall have all her ancient Liberties and free Cuſtoms, as well by Land as by Water.

* Scutage was Military Service, due to the King from the Tenants in Chief. It is to be underſtood alſo of what the Feudataries paid the King in lieu of that Service, and likewiſe of the Tax which was impoſed on each Vaſſal for the Service of the Publick. Since *William* the Conqueror, the Kings had frequently impoſed Scutages, without the Conſent of the States. *Rapin.*

XVI. Furthermore, we Will and Grant that all other Cities and Boroughs, and Towns (8) and Ports, have all their Liberties and free Cuſtoms.

XVII. And in Order to hold a Common Council of the Kingdom for aſſeſſing an Aid (otherwiſe than in the three Caſes aforeſaid) or for the aſſeſſing a Scutage, we ſhall Cauſe to be ſummoned the Archbiſhops, Biſhops, Abbots, Earls, and great Barons ſeverally by our Letters.

XVIII. And moreover, we ſhall Cauſe to be ſummoned in general, by our Sheriffs and Bailiffs, all thoſe who hold of us *in Capite* *, to a certain Day, namely, at the End or Expiration of Forty Days at leaſt, and to a certain Place; and in all Letters of Summons, we ſhall Expreſs the Cauſe of the Summons.

XIX. [And Summons being thus made, the Buſineſs ſhall proceed on the Day appointed, according to the Advice of ſuch as are preſent, although all that were ſummoned come not.]

(8) [And Barons of the Cinque Ports †.]

† The Cinque Ports lay in the County of *Kent*. They had great Privileges, which King *John* himſelf had augmented. The Governors of them were called Barons, as they are at this Day. *Rapin.*

* It ſeems to follow from this Article, that none but Tenants in chief had a right to ſit in the Common Council or Parliament. Otherwiſe it was natural to mention here the Repreſentatives of the Commons, had they enjoyed that Right in thoſe Days. *Rapin.*

XX. We

XX. We will not for the future grant to any ne, that he may take aid of his own Free-enants, unleſs to redeem his Body; and to ake his eldeſt Son a Knight, and once to mar-y his eldeſt Daughter; and for this there ſhall nly be paid a reaſonable Aid.

XXI. No Man ſhall be diſtrained to perform nore Service for a Knight's Fee, or other free enement, than is due from thence †.

XXII. Common Pleas *, ſhall not follow our Court,

† This was the ancient Law of England, as appears by *Glanvil*, l. XII. c. 9, 10. *Coke*, p. 21.

* It may not be amiſs to give an Abſtract of *Maddox*'s ypotheſis concerning the Diviſion of the King's Court nd Erection of the Bank or Common Bench. That the ing's Court or Palace was anciently the great and prin-ipal Seat of Judicature in this Realm, has been obſerved n a former Note on the Exchequer. But in proceſs of ime, namely, about the End of King *John*'s Reign, the udicature of the King's Court came to be divided. And y that Diviſion, Common Pleas were reſerved to a Court hen newly erected; which Court was called the Bank, ecauſe it was fixed at *Weſtminſter*, at which Place the uſticiers thereof were to ſit and not follow the King's ourt. The Bank was, probably, ſet up in aid of the ing's Court, as the Iters formerly were. It has been in-eed, for ſome Time paſt a received Opinion, that the ur ſuperior Courts holden at this Day in *Weſtminſter-all* are of coeval Antiquity. This may ſerve to ſilence eedleſs Diſputes concerning the Pre-eminence of one or her of the King's Courts, but does not ſeem to agree ith the ancient Records. For the Name or Style of the ank, or Juſticiers of the Bank, does not occur till long fter the *Norman* Conqueſt, conſequently the Bank or ommon Bench was a Court different from the *Curia Regis*,

Court, but be holden in ſome certain Place: Tryals upon the Writs of *Novel Diſſeiſin*, and of

and erected at ſome ſubſequent Time. And as the Bank hath all along, ſince the Time of the firſt Notice of it, dealt only or chiefly in Common Pleas; ſo it falls out, that the *Curia Regis* ceaſed to deal ordinarily in Common Pleas, about the ſame Time the Bank is ſuppoſed to be erected. Now this Diviſion of the King's Court ſeems to have been begun in the Reign of *Richard* I. or King *John*, and compleated in the Reign of *Henry* III. And to this the Great Charter, no doubt, was very conducive. In this Article of the Magna Charta therefore, by *Curiam noſtram* may be underſtood the King's Court holden in his Palace; and by *Aliquo certo loco*, the Bank. So that by this Clauſe, the Bank might be erected, or rather confirmed and eſtabliſhed. It is likely, however, the Bank was not firſt erected in the ſeventeenth of King *John*. For there is mention in the twenty-third and twenty-fourth Chapters of that King's Charters, of the *Juſticiarii noſtri de Banco*, which ſhews, there was a Court called the Bank, before, or at leaſt, at that Time. In truth there was a Court called the Bank, and Juſticiers ſtyled *Juſticiarii de Banco* ſeveral Years before, as appears by Records. About the Time the Common Pleas were moving off from the King's Court, certain Phraſes were introduced, that were not before in general Uſe. Such as *Curia Regis apud Weſtmonaſterium*, *Juſticiarii Regis de Weſt*, or *apud Weſt*, *Bancus*, and *Juſticiarii de Banco*. See Mag. Rot. 7. R. 1. Rot. 18. 9 R. 1. Rot. 11. 2 J. Rot. 3. &c. So that it ſeems likely, that the Bank not being yet completely ſettled, the Perſon who was the Chief Juſticier of England, uſed to ſit and act at this Time, as well in the Bank, as in the King's Court, and the Exchequer. Moreover, though there was a Bank in the former part of King *John*'s Reign, yet it ſeems, even at the End of his Reign, Common Pleas were not only completely ſeperated from the King's Court. For in the Clauſe, *Communia Placita non ſequantur*

of *Mort d'Anceſter*, and of *Darreine Preſentment* *, ſhall be taken but in their proper Counties

ſequantur noſtram Curiam, it is implied that Common Pleas did then, in ſome Meaſure, follow the King's Court. Upon which Ground it is ordered, they ſhould not for the future follow the King's Court, but be held in *Aliquo certo loco*. However this Clauſe in King *John*'s Charter did not quite take away from the King's Court the former uſage in dealing in Common Pleas, or completely annex them to the Bank. For the ſame Clauſe was inſerted Verbatim in the Great Charter of the 9th of *Henry* III. See Mag. Rot. 2 H. III. Rot. 2. 10 Hen. III, &c. In the Reign of King *John*, after the erecting of the Bank, the Style of the ſuperior Court began to alter. By degrees, the Phraſe *Curia Regis*, went into diſuſe. And the Pleas and Proceedings in that Court, were frequently ſaid to be *Coram Rege*, or *Domino Rege*; and in proceſs of Time, *Coram Domino Rege Ubicunque*, &c. See Mag. Rot. 6 J. Rot. 16. 11. J. 4. &c. Againſt what has been ſaid are urged *Glanvil*'s Words, *Coram Juſticiis in Banco ſedentibus* or *reſidentibus*, which, it is ſaid, prove the Bank was in being in his Time, namely, in the Reign of *Henry* II. But *Maddox* ſhews, theſe Words mean only the Juſtices ſitting in the *Curia Regis in Banco*, upon the Bench, that is, in open and ſolemn Court. See Hiſt. Exchеq. chap. 19.

* A Writ of Aſſize of *Novel Diſſeiſin* lies, where a Tenant, for ever, or for life, is put out and diſſeiſed of his Lands or Tenements, Rents, Common of Paſture, Common Way, or of an Office, Toll, &c. that he may recover his right. *G. Jacob.* A Writ of *Mort d'Anceſter*, is that which lies where any of a Man's near Relations die, ſeized of Lands, Rents, or Tenements, and after their Deaths, a Stranger ſeizes upon them. A Writ of *Darreine Preſentment*, lies, where a Man and his Anceſtors have preſented to a Church, and after it is become void, a Stranger preſents thereto, whereby the Perſon having Right is diſturbed. *Id.*—This

Counties and after this Manner: we, or (if we are out of the Realm) our chief Juſticiary, ſhall ſend two Juſticiaries through every County four Times a Year; who with the four Knights choſen out of every Shire, by the People, ſhall hold the ſaid Aſſizes in the County, on the Day, and at the Place, appointed †.

XXIII. And if any Matters cannot be determined on the Day appointed to hold the Aſſizes in each County, ſo many of the Knights and Freeholders as have been at the Aſſizes aforeſaid, ſhall be appointed to decide them, as is Neceſſary, according as there is more or leſs Buſineſs (9).

XXIV. A Freeman * ſhall not be amerced for a ſmall Fault, but according to the degree of the Fault; and for a great Crime, in Proportion to the Heinouſneſs of it: Saving to him his

(9) 24. [Aſſizes of *Darreine Preſentment* to Churches ſhall be always taken before the Juſticiaries of the Bench.]

Article tended greatly to the Eaſe of the Jurors, and to the ſaving of Charges to the Party concerned; for, before this Statute, the Writs of Aſſize of *Novel Diſſeiſin*, &c. were returnable, either before the King, or in the Court of Common Pleas, and to be taken there. *Coke*, p. 24.

† In all Appearance, ſince the Conqueſt, the Kings had aboliſhed or very much altered this way of trying Cauſes, that they might have the Deciſion of Matters in their own Power. *Rapin.*

* By Freemen here and in moſt Places muſt be underſtood Freeholders, i. e. thoſe that held their Lands of the King or ſome other Lord by a certain Relief.

Contentment

Contenement ‡, and after the ſame Manner a Merchant, ſaving to him his Merchandiſe.

XXV. And a Villain (1) ſhall be amerced after the ſame Manner, ſaving to him his Wainage §, if he falls under our Mercy; and none of the aforeſaid Amerciaments * ſhall be aſſeſſed but by the Oath of honeſt Men of the Neighbourhood (2).

XXVI. Earls and Barons ſhall not be amerced but by their Peers †, and according to the Quality of the Offence.

XXVII. No Eccleſiaſtical Perſon ſhall be amerced for his Lay-tenement, but according to the Proportion aforeſaid, and not according to the Value of his Eccleſiaſtical Benefice.

XXVIII. Neither a Town, nor any Perſon, ſhall be diſtreined to make Bridges over Rivers,

(1) [Of any other than our own.]
(2) [Of the County.]

‡ Contenementum is to be underſtood of the Means of a Man's Livelihood, as the Arms of a Soldier, the Ploughs and Carts of a Huſbandman, &c.

§ That is, his Carts and Implements of Huſbandry.

* Amerciament is derived from the French Word *Merci*, and ſignifies the pecuniary Puniſhment of an Offender againſt the King, or other Lord in his Court, that is found to have offended, and to ſtand at the Mercy of the King or his Lord. *Jacob.*

† In *England* there are two Orders or Degrees of Subjects, Peers of the Realm, and Commoners. The Nobles have for their Peers, all the Peers of the Realm; and the Commoners are all reckoned Peers of one another. *Rapin.*

unleſs that anciently and of right they are Bound to do it (3).

XXIX. No Sheriff, Conſtable *, Coroners, or other our Bailiffs, ſhall hold Pleas of the Crown.

XXX. [All Counties, Hundreds, Wapentakes, and Trethings, ſhall ſtand at the old Form, without any Increaſe, except in our Demeſne Lands.]

XXXI. If any one that holds of us a Lay-fee, Dies, and the Sheriff or our Bailiff ſhew our Letters Patents of Summons concerning the Debt, due to us from the deceaſed; it ſhall be lawful for the Sheriff or our Bailiff to attach and regiſter the Chattles of the deceaſed found upon his Lay-fee, to the Value of the Debt, by the View of lawful Men, ſo as nothing be removed until our whole Debt be paid; and the reſt ſhall be left to the Executors to fulfil the Will of the deceaſed; and if there be nothing due

(3) 30. [No River for the future ſhall be imbanked, but what was imbanked in the Time of King *Henry* our Grandfather.]

* Is here taken for Conſtable of a Caſtle. They were Men in antient Times, of Account and Authority; and for Pleas of the Crown, &c. had the like Authority within their Precincts, as the Sheriff had within his Bailiwick, before this Act; and they commonly ſealed with their Portraiture on Horſeback. Regularly every Caſtle contains a Manor, ſo that every Conſtable of a Caſtle is Conſtable of a Manor.

from

from him to us, all the Chattles ſhall remain to the deceaſed, ſaving to his Wife and Children their reaſonable Share.

XXXII. [If any Freeman dies Inteſtate, his Chattels ſhall be diſtributed by the Hands of his neareſt Relations and Friends by View of the Church, ſaving to every one his Debts, which the deceaſed owed.]

XXXIII. No Conſtable or Bailiff of ours ſhall take Corn or other Chattles of any Man (4), unleſs he preſently gives him Money for it, or hath reſpite of Payment from the Seller (5).

XXXIV. No Conſtable ſhall diſtrain any Knight to give Money for Caſtle-guard, if he himſelf will do it in his own Perſon, or by another able Man, in Caſe he is hindered by any reaſonable Cauſe.

XXXV. And if we lead him, or ſend him into the Army, he ſhall be free from Caſtle-guard, for the Time he ſhall be in the Army, by our Command (6).

XXXVI. No Sheriff or Bailiff of ours, or any other, ſhall take Horſes or Carts of any for Carriage (7).

(4) [Who is not of the Town where the Caſtle is.]

(5) [But if he be of the ſame Town, he ſhall pay him within forty Days.]

(6) [For the Fee, for which he did Service in the Army.]

(7) [Without paying according to the Rate antiently appointed, that is to ſay, for a Cart and two

XXXVII. Neither we, or our Officers, or Others, ſhall take any Man's Timber for our Caſtles, or other Uſes, unleſs by the Conſent of the Owner of the Timber (8).

XXXVIII. We will retain the Lands of thoſe that are convicted of Felony but one Year and a Day, and then they ſhall be delivered to the Lord of the Fee.

XXXIX. All the Wears for the Time to come ſhall be deſtroyed in the Rivers of *Thames* and *Medway*, and throughout all *England*, except upon the Sea Coaſt.

XL. The Writ, which is called *Præcipe* *, for the future, ſhall not be granted to any one of any Tenement, whereby a Freeman may loſe his Cauſe.

XLI. There ſhall be one Meaſure of Wine and one of Ale, through our whole Realm, and one Meaſure of Corn; that is to ſay, the *London* Quarter; and one Breadth of dyed Cloth, and

Horſes Ten-pence a Day; and for a Cart with three Horſes Fourteen-pence a Day.]

(8) [No Demeſne Cart of any Eccleſiaſtical Perſon, or Knight, or any Lady, ſhall be taken by our Officers.]

* The Writ called *Præcipe quod Reddat*, from the firſt Words in it has ſeveral Uſes. It ſignifies in general an Order from the King, or ſome Court of Juſtice, to put in Poſſeſſion one that Complains of having been unjuſtly outed. Apparently ſeveral Abuſes had crept in upon this Article. *Rapin.*

Ruſſets

Ruſſets and Haberjects †, that is to ſay, two Ells within the Liſt; and the Weights ſhall be as the Meaſures.

XLII. From henceforward nothing ſhall be given or taken for a Writ of Inquiſition ‖, from him that deſires an Inquiſition of Life or Limbs, but that ſhall be granted gratis and not denied.

XLIII. If any one holds of us by Fee-Farm, or Socage, or Burgage §, and holds Lands of another by Military Service, we will not have the Wardſhip of the Heir or Land, which belongs to another Man's Fee, by Reaſon of what he holds of us by Fee-Farm, Socage, or Burgage: Nor will we have the Wardſhip of the Fee-Farm, Socage, or Burgage, unleſs the Fee-Farm is bound to perform Military Service.

XLIV. We will not have the Wardſhip of an Heir, nor of any Land, which he holds of another by Military Service, by reaſon of any Petit Serjeanty he holds of us, as by the Service of giving us Daggers, Arrows, or the like.

† A ſort of coarſe Cloth.

‖ This was a Writ directed to the Sheriff, to enquire, whether a Man, committed to Priſon on Suſpicion of Murder, was committed on juſt Cauſe of Suſpicion, or only out of Malice and Ill-will. *Jacob.*

§ To hold in Fee-Farm, is when there is ſome Rent reſerved by the Lord upon the Creation of the Tenancy. In Socage, upon Condition of ploughing the Lord's Land, and doing other inferior Offices of Huſbandry: and in Burgage, when the Inhabitants of a Borough held their Tenements of the King at a certain Rent.

XLV. No Bailiff for the future ſhall put any Man to his Law §, (9) upon his ſingle Accuſation, without credible Witneſſes produced to prove it.

XLVI. No Freeman ſhall be taken, or impriſoned, or diſſeiſed (1), or outlawed, or baniſhed, or any ways deſtroyed; nor will we paſs upon him, or commit him to Priſon, unleſs by the legal Judgment of his Peers, or by the Law of the Land ‖.

XLVII. We will ſell to no Man, we will deny no Man, or defer Right nor Juſtice.

XLVIII. All Merchants (2) ſhall have ſafe and ſecure Conduct to go out of, and to come into *England* *; and to ſtay there, and to paſs as well by Land as by Water, to buy and ſell by the antient and allowed Cuſtoms, without any evil Tolls, except in Time of War, or when they are of any Nation at War with us.

XLIX. And if there be found any ſuch in our Land in the beginning of a War, they ſhall be attached, without Damage to their Bodies

(9) [Nor to an Oath.]
(1) [Of his Freehold or Liberties, or free Cuſtoms.]
(2) [Unleſs they be publickly prohibited.]

§ To make his Law, is as much as to ſay, to take his Oath, &c.

‖ That is, ſays Dr *Brady*, by legal Proceſs, &c.

* By ſome antient Laws of *England*, foreign Merchants were forbid coming into the Kingdom, except in Fair Time, and then were not to ſtay above forty Days. *Coke*, p. 57.

or

r Goods, until it may be known unto us, or ur Chief Juſticiary, how our Merchants be reated in the Nation at War with us; and if urs be ſafe there, they ſhall be ſafe in our Dominions.

L. [It ſhall be lawful for the Time to come, or any one to go out of our Kingdom, and return ſafely or ſecurely by Land or by Water, ſaving his Allegiance to us; unleſs in Time of War by ſome ſhort Space for the common Benefit of the Kingdom, except Priſoners and Outlaws, (according to the Law of the Land) and People in War with us, and Merchants who ſhall be in ſuch Condition as is above-mentioned.]

LI. If any Man holds of us an Eſcheat, as of the Honour of *Wallingford*, *Nottingham*, *Boulogne*, *Lancaſter*, or of other Eſcheats which are in our Hands, and are Baronies, and dies, his Heir ſhall not give any other Relief, or perform any other Service to us than he would to the Baron, if the Barony were in Poſſeſſion of the Baron; we will hold it after the ſame Manner the Baron held it (3).

LII. [Thoſe Men who dwell without the Foreſt, from henceforth ſhall not come before our Juſticiaries of the Foreſt upon Common

(3) [Nor will we by Reaſon of ſuch Barony or Eſcheat, have any Eſcheat or Wardſhip of any of our Men, unleſs he that held the Barony or Eſcheat, held of us in Chief elſewhere.]

Summons,

Summons; but ſuch as are impleaded, or are Pledges for any that were attached for ſomething concerning the Foreſt (4).

LIII.

(4) 59. [No County-Court for the future ſhall be holden, but from Month to Month; and where there uſed to be a greater Interval, let it be ſo continued. 60. Neither any Sheriff, nor his Bailiff, ſhall keep his turn in the Hundred oftener than twice in a Year, and only in the accuſtomed Place; that is, once after Eaſter, and once after Michaelmas; and the View of Frank-pledge ſhall be held after Michaelmas, without Occaſion *, and ſo that every one ſhall have his Liberties, which he had and was wont to have in the Time of King *Henry* our Grandfather, or ſuch as he obtained afterwards. 61. But the View of Frank-pledge ſhall be ſo made, that our Peace may be kept, and that the Tything be full, as it was wont to be. 62. And the Sheriffs ſhall not ſeek Occaſions †, but ſhall be Content with what the Sheriff was wont to have for making his View in the Time of King *Henry* our Grandfather. 63. For the Time to come it ſhall not be lawful for any Man to give his Land to a Religious Houſe, ſo as to take it again, and hold it of that Houſe. 64. Nor ſhall it be lawful for any Religious Houſe to receive Land, ſo as to grant it to him again of whom they received it, to hold of him. If any Man for the future ſhall ſo give his Land to a Religious Houſe, and be convicted thereof, his Gift ſhall be void, and the Land ſhall be forfeited to the Lord of the Fee §. 65. Scutage for the future ſhall not

* *Sine Occaſione*, i. e. without Oppreſſion. *Brady.*

† *Occaſiones.* Cauſes to Oppreſs any Man. *Brady.*

§ The reaſons of theſe two Articles were, becauſe by holding

LIII. We will not make any Juſticiaries, Conſtables, Sheriffs, or Bailiffs, but what are knowing in the Law of the Realm, and are diſpoſed duly to obſerve it.

LIV. All Barons, who are Founders of Abbies, and have Charters of the Kings of *England* for the Advowſon, or are entitled to it by ancient Tenure, may have the Cuſtody of them, when void, as they ought to have.

LV. All Woods that have been taken into the Foreſts (5) in our own Time, ſhall forthwith be laid out again (6), and the like ſhall be done with the Rivers that have been taken or fenced in by us, during our Reign.

not be taken as it was uſed to be taken in the Time of King *Henry* our Grandfather; [and that the Sheriff ſhall oppreſs no Man, but be content with what he was wont to have.] 66. Saving to the Archbiſhops, Biſhops, Abbots, Priors, Templers, Hoſpitallers, Earls, Barons, Knights, and all Others, as well Eccleſiaſticks as Seculars, the Liberties and Free Cuſtoms which they had before: theſe being Witneſſes, &c.

(5) [By King *Richard* our Brother.]

(6) [Unleſs they were our Demeſne Woods.]

holding their Lands of the Church, the Service due from the Fees, which were intended for the Defence of the Realm were unduly withdrawn; and becauſe the Chief Lords loſt the Eſcheats, Wardſhips, Reliefs, and the like. Abundance of Ways were uſed to evade the Force of this Law. But an effectual Stop was put to them at laſt by the Statue of Mortmain, 7 Edw. II.

LVI.

LVI. All evil Cuſtoms concerning Foreſts, Warrens, and Foreſters, Warreners, Sheriffs, and their Officers, Rivers, and their Keepers, ſhall forthwith be enquired into in each County, by twelve Knights of the ſame Shire, choſen by the moſt creditable Perſons in the ſame County, and upon Oath; and, within forty Days after the ſaid Inqueſt, be utterly aboliſhed, ſo as never to be reſtored ÷ (7).

LVII. We will immediately give up all Hoſtages and Engagements, delivered unto us by our *Engliſh* Subjects, as Securities for their keeping the Peace, and yielding us faithful Service.

LVIII. We will entirely remove from our Bailiwicks the Relations of *Gerard de Athyes*, ſo as that for the future they ſhall have no Bailiwick in *England*. We will alſo remove *Engelard de Cygony*, *Andrew*, *Peter*, and *Gyon de Canceles*, *Gyon de Cygony*, *Geoffrey de Martyn*, and his Brothers, *Philip Mark*, and his Brothers, and his Nephew *Geoffry*, and their whole Retinue.

LIX. And as ſoon as Peace is reſtored, we will ſend out of the Kingdom all foreign Soldiers, Croſsbow-men, and Stipendiaries, who are come with Horſes and Arms, to the injury of our People.

(7) 54. [No Freeman for the future ſhall give or ſell any more of his Land, but ſo that out of the Reſidue, the Service due to the Lord of the Fee may be ſufficiently performed.]

LX.

LX. If any one hath been diſpoſſeſſed, or deprived by us without the legal Judgment of his Peers, of his Lands, Caſtles, Liberties or Right, we will forthwith reſtore them to him; and if any diſpute ariſes upon this Head, let the Matter be decided by the five and twenty Barons hereafter mentioned *, for the Preſervation of the Peace.

LXI. As for all thoſe Things, of which any Perſon has without the legal Judgment of his Peers been diſpoſſeſſed or deprived, either by King *Henry* our Father, or our Brother King *Richard*, and which we have in our Hands, or are poſſeſſed by others, and we are bound to Warrant and make good, we ſhall have a Reſpite, till the Term uſually allowed the Croiſes: excepting thoſe Things about which there is a Suit depending, or whereof an Inqueſt hath been made by our Order, before we undertook the Cruſade. But when we return from our Pilgrimage, or if we do not perform it, we will immediately cauſe full Juſtice to be adminiſtred therein.

* Their Names, according to *M. Paris*, were the Earls of *Clare*, *Albemarle*, *Glouceſter*, *Wincheſter*, *Hereford*, Earl *Roger*, Earl *Robert*, Earl *Mareſcall*, Junior, *Robert Fitzwalter*, Senior, *Gilbert de Clare*, *Euſtace de Veſci*, *Hugh Bigod*, *William de Munbray*, the Mayor of *London*, *Gilbert de Laval*, *Robert de Ro:*, the Conſtable of *Cheſter*, *Richard de Perci*, *John Fitzrobert*, *William Mallet*, *Geoffrey de Say*, *Roger de Munbray*, *William de Huntingfield*, *Richard de Muntfichet*, *William de Albiney*, p. 262.

LXII.

LXII. The ſame Reſpite we ſhall have △ for diſafforeſting the Foreſts, which *Henry* our Father, or our Brother *Richard* have afforeſted; and for the Wardſhip of the Lands which are in another's Fee, in the ſame Manner as we have hitherto enjoyed thoſe Wardſhips, by Reaſon of a Fee held of us by Knight's Service; and for the Abbies founded in any other Fee than our own, in which the Lord of the Fee claims a Right: And when we return from our Pilgrimage, or if we ſhould not perform it, we will immediately do full Juſtice to all the Complainants in this behalf.

LXIII. No Man ſhall be taken or impriſoned, upon the Appeal of a Woman, for the Death of any other Man than her Huſband.

LXIV. All unjuſt and illegal Fines, and all Amerciaments impoſed unjuſtly, and contrary to the Law of the Land, ſhall be entirely forgiven, or elſe be left to the Deciſion of the five and twenty Barons hereafter mentioned, for the Preſervation of the Peace, or of the major Part of them, together with the aforeſaid *Stephen*, Archbiſhop of *Canterbury*, if he can be preſent, and others whom he ſhall think fit to take along with him: And if he cannot be preſent, the Buſineſs ſhall notwithſtanding go on without him. But ſo, that if one or more of the foreſaid five and twenty Barons be Plaintiffs in the ſame Cauſe, they ſhall be ſet aſide, as to what concerns this particular Affair; and others be choſen in their Room out of the ſaid five and twenty,

twenty, and ſworn by the Reſt to decide that Matter.

LXV. If we have diſſeiſed or diſpoſſeſſed the *Welſh* of any Lands, Liberties, or other Things, without the legal Judgment of their Peers, they ſhall immediately be reſtored to them. And if any diſpute ariſes upon this Head, the Matter ſhall be determined in the Marches, by the Judgment of their Peers: For Tenements in *England*, according to the Law of *England:* For Tenements in *Wales*, according to the Law of *Wales:* The ſame ſhall the *Welſh* do to us and our Subjects.

LXVI. As for all thoſe Things, of which any *Welſhman* hath, without the legal Judgment of his Peers, been diſſeiſed or deprived, by King *Henry* our Father, or our Brother King *Richard*, and which we either have in our Hands, or others are poſſeſſed of, and we are obliged to Warrant it; we ſhall have a Reſpite till the Time generally allowed the Croiſes: Excepting thoſe Things about which a Suit is depending, or whereof an Inqueſt hath been made by our Order, before we undertook the Cruſade. But when we ſtay at home and do not perform our Pilgrimage, we will immediately do them full Juſtice according to the Laws of the *Welſh*, and of the Parts aforementioned.

LXVII. We will without delay diſmiſs the Son of *Lewelin*, and all the *Welſh* Hoſtages, and releaſe them from the Engagements they entered

entered into with us for the Preſervation of the Peace.

LXVIII. We ſhall treat with *Alexander* King of *Scots*, concerning the reſtoring of his Siſters and Hoſtages, and his Right and Liberties, in the ſame Form and Manner as we ſhall do to the reſt of our Barons of *England*; unleſs by the Engagements which his Father *William* late King of *Scots*, had entered into with us it ought to be otherwiſe; and this ſhall be left to the Determination of his Peers in our Court.

LXIX. All the aforeſaid Cuſtoms and Liberties which we have granted, to be holden in our Kingdom, as much as it belongs to us towards our People; all our Subjects as well Clergy as Laity, ſhall obſerve as far as they are concerned towards their Dependents.

LXX. And, whereas for the Honour of God, and the Amendment of our Kingdom, and for quieting the Diſcord that has ariſen between us and our Barons, we have granted all the Things aforeſaid; willing to render them firm and laſting, we do give and grant our Subjects the following Security; namely, that the Barons may chooſe five and twenty Barons of the Kingdom, whom they think convenient, who ſhall take Care with all their might, to hold and obſerve, and cauſe to be obſerved, the Peace and Liberties we have granted them, and by this our preſent Charter confirmed. So as that, if we, our Juſticiary, our Bailiffs, or

r any of our Officers, ſhall in any Caſe fail
n the Performance of them, towards any Per-
on; or ſhall break through any of theſe Arti-
les of Peace and Security, and the Offence is
otified to four Barons, choſen out of the five
nd twenty aforementioned, the ſaid four Ba-
ons ſhall repair to us, or our Juſticiary if we
re out of the Realm; and laying open the
Grievance, ſhall Petition to have it redreſſed
without delay; and if it is not redreſſed by us,
or, if we ſhould chance to be out of the Realm,
if it is not redreſſed by our Juſticiary within
forty Days, reckoning from the Time it has
been notified to us, or to our Juſticiary, if we
ſhould be out of the Realm; the four Barons
aforeſaid, ſhall lay the Cauſe before the reſt of
the five and twenty Barons: and the ſaid five
and twenty Barons, together with the Commu-
nity of the whole Kingdom, ſhall diſtrain and
diſtreſs us all the ways poſſible; namely, by
ſeizing our Caſtles, Lands, Poſſeſſions, and in
any other Manner they can, till the Grievance
is redreſſed according to their Pleaſure, ſaving
harmleſs our own Perſon, and the Perſon of
our Queen andChildren; and when it is redreſ-
ſed, they ſhall obey us as before.

LXXI. And any Perſon whatſoever in the Kingdom may ſwear, that he will obey the Orders of the five and twenty Barons aforeſaid, in the Execution of the Premiſſes, and that he will diſtreſs us, jointly with them, to the utmoſt of his Power; and we give publick and free

free Liberty to any one that will ſwear to them, and never ſhall hinder any Perſon from taking the ſame Oath.

LXXII. As for all thoſe of our Subjects, who will not, of their own Accord, ſwear to join the five and twenty Barons, in diſtraining and diſtreſſing us, we will iſſue our Order to make them take the ſame Oath, aforeſaid.

LXXIII. And if any one of the five and twenty Barons dies, or goes out of the Kingdom, or is hindered any other way, from putting the Things aforeſaid in Execution; the reſt of the ſaid five and twenty Barons may chooſe another in his Room, at their Diſcretion, who ſhall be ſworn in like Manner as the reſt.

LXXIV. In all Things that are committed to the Charge of theſe five and twenty Barons, if, when they are all aſſembled together, they ſhall happen to diſagree about any Matter; or ſome of them, when ſummoned, will not, or cannot come, whatever is agreed upon, or enjoyned by the major Part of thoſe who are preſent, ſhall be reputed as firm and valid, as if all the five and twenty had given their Conſent, and the aforeſaid five and twenty ſhall ſwear, that all the Premiſſes they ſhall faithfully obſerve, and cauſe with all their Power to be obſerved.

LXXV. And we will not, by ourſelves, or others, procure any Thing, whereby any of theſe Conceſſions and Liberties be revoked, or leſſened;

leſſened; and if any ſuch Thing be obtained, let it be null and void; neither ſhall we ever make uſe of it, either by ourſelves, or any other.

LXXVI. And all the Ill-Will, Anger, and Malice, that hath ariſen between us and our Subjects, of the Clergy and Laity, from the firſt breaking out of the Diſſention between us, we do fully remit, and forgive. Moreover all Treſpaſſes occaſioned by the ſaid Diſſention, from Eaſter in the ſixteenth Year of our Reign, till the Reſtoration of Peace and Tranquility, we hereby entirely remit, to all Clergy as well as Laity, and as far as in us lies, do fully forgive.

LXXVII. We have moreover granted them our Letters Patents Teſtimonial of *Stephen*, Lord Archbiſhop of *Canterbury*, *Henry*, Lord Archbiſhop of *Dublin*, and the Biſhops aforeſaid, as alſo of Maſter *Pandulph*, for the Security and Conceſſions aforeſaid.

LXXVIII. Wherefore we will and firmly enjoin, that the Church of *England* be free, and that all Men in our Kingdom, have and hold, all the foreſaid Liberties, Rights, and Conceſſions, truly and peaceably, freely and quietly, fully and wholly, to themſelves and their Heirs, of us and our Heirs, in all Things and Places for ever, as is aforeſaid.

LXXIX. It is alſo ſworn, as well on our Part, as on the Part of the Barons, that all the Things

Things aforeſaid ſhall faithfully and ſincerely be obſerved.

Given under our Hand, in the Preſence of the Witneſſes above named, and many others in the Meadow called *Runingmede*, between *Windeleſore* and *Stanes*, the 15th Day of *June*, in the 17th Year of our Reign. 1215

∺ So as we are firſt acquainted therewith, or our Juſticiary, if we ſhould not be in *England*.

△ And in the ſame Manner, about adminiſtring Juſtice, deafforeſting the Foreſts, or letting them continue.

÷ Either in *England* or *Wales*.—

∴ For Ever.—

MAGNA

MAGNA CHARTA;

OR, THE

GREAT CHARTER:

Made in the ninth Year of King HENRY the Third, and confirmed by King EDWARD the Firſt, in the eight and twentieth Year of his Reign.

EDWARD, *by the Grace of God, King of* England, *Lord of* Ireland, *and Duke of* Guyan; *to all Archbiſhops, Biſhops,* &c. *We have ſeen the great Charter of the Lord* HENRY, *ſometimes King of* England, *our Father, of the Liberties of* England, *in theſe Words:*

HENRY, by the Grace of God, King of *England*, Lord of *Ireland*, &c. To all Archbiſhops, Biſhops, *&c.* and other our faithful Subjects, which ſhall ſee this preſent Charter, greeting. Know ye that we, unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Succeſſors, Kings of *England*, to the Advancement of holy Church,

and Amendment of our Realm, of our meer and free Will have given and granted to all Archbiſhops, Biſhops, *&c.* and to all Freemen of this our Realm, theſe Liberties following, to be kept in our Kingdom of *England* for ever.

CAP. I.

A Confirmation of Liberties.

FIRST, we have granted to God, and by this our preſent Charter have confirmed for us and our Heirs for ever, that the Church of *England* ſhall be free, and ſhall have all her whole Rights and Liberties inviolable. We have granted alſo, and given to all the Freemen of our Realm, for us and our Heirs for ever, theſe Liberties under written, to have and to hold to them and their Heirs of us and our Heirs for ever. 42 Ed. 3. cap. 1. & 52 H. 3. c. 5.

CAP. II.

The Relief of the King's Tenant of full Age.

IF any of our Earls or Barons, or any other, which hold of us in chief by Knight's Service, die, and at the Time of his Death his Heir be of full Age, and oweth to us Relief, he ſhall have his Inheritance by the old Relief, that is to ſay, the Heir or Heirs of an Earl, for a whole Earldom, by one hundred Pounds: the Heir or Heirs of a Baron, for an whole Barony, by one hundred Marks: the Heir or Heirs of a Knight,

Knight, for one whole Knight's Fee, one hundred Shillings at the moſt. And he that hath leſs ſhall give leſs, according to the old Cuſtom of the Fees. V. N. B. fol. 94. a. 3 Bulſtr. 325.

CAP. III.

The Wardſhip of an Heir within Age. The Heir a Knight.

BUT if the Heir of any ſuch be within Age, his Lord ſhall not have the Ward of him, nor of his Land, before that he hath taken of him Homage. And after that ſuch an Heir hath been in Ward, (when he is come to full Age) that is to ſay, to the Age of one and twenty Years, he ſhall have his Inheritance without Relief, and without Fine: ſo that if ſuch an Heir being within Age be made Knight, yet nevertheleſs his Land ſhall remain in the keeping of his Lord unto the Term aforeſaid. F. N. B. fol. 269. Alt. 12 Car. 2. cap. 24.

CAP. IV.

No Waſte ſhall be made by a Guardian in Wards Lands.

THE Keeper of the Land of ſuch an Heir being within Age, ſhall not take of the Lands of the Heir, but reaſonable Iſſues, reaſonable Cuſtoms, and reaſonable Services, and that without Deſtruction and Waſte of his Men and his Goods. And if we commit the Cuſtody of

any ſuch Land to the Sheriff, or to any other, which is anſwerable unto us for the Iſſues of the ſame Land, and he make Deſtruction or Waſte of thoſe Things that he hath in Cuſtody, we will take of him Amends and Recompence therefore, and the Land ſhall be committed to two lawful and diſcreet Men of that Fee, which ſhall anſwer unto us for the Iſſues of the ſame Land, or unto him whom we will aſſign. And if we give or ſell to any Man the Cuſtody of any ſuch Land, and he therein do make Deſtruction or Waſte, he ſhall loſe the ſame Cuſtody. And it ſhall be aſſigned to two lawful and diſcreet Men of that Fee, which alſo in like Manner ſhall be anſwerable to us, as afore is ſaid. Stat. 6 Ed. 1. 3. St. 28 Ed. 1. 18. St. 14 Ed. 3. 13. St. 36 Ed. 3. 13.

CAP. V.

Guardians ſhall maintain the Inheritance of their Wards: And of Biſhoprics, &c.

THE Keeper, ſo long as he hath the Cuſtody of the Land of ſuch an Heir, ſhall keep up the Houſes, Parks, Warrens, Ponds, Mills, and other Things pertaining to the ſame Land, with the Iſſues of the ſaid Land: and he ſhall deliver to the Heir when he cometh to his full Age, all his Land ſtored with Ploughs and all other Things, at the leaſt as he received it. All theſe Things ſhall be obſerved in the Cuſtodies of Archbiſhoprics, Biſhoprics, Abbies, Priories, Churches and Dignities

nities vacant, which appertain to us; except this that ſuch Cuſtody ſhall not be ſold. St. 3 Ed. 1. 21. Stat. 36 Ed. 3. 13. V. N. B. 37.

CAP. VI.

Heirs ſhall be married without Diſparagement.

HEIRS ſhall be married without Diſparagement. Stat. 20 H. 3. 6.

CAP. VII.

A Widow ſhall have her Marriage, Inheritance, and Quarentine. The King's Widow, &c.

A Widow, after the Death of her Huſband, incontinent and without any Difficulty, ſhall have her Marriage and her Inheritance, and ſhall give nothing for her Dower, her Marriage or her Inheritance, which her Huſband and ſhe held the Day of the Death of her Huſband. And ſhe ſhall tarry in the chief Houſe of her Huſband by forty Days after the Death of her Huſband, within which Days her Dower ſhall be aſſigned her (if it were not aſſigned her before) or that the Houſe be a Caſtle. And if ſhe depart from the Caſtle, then a competent Houſe ſhall be forthwith provided for her, in the which ſhe may honeſtly dwell, until her Dower be to her aſſigned, as it is aforeſaid. And ſhe ſhall have in the mean Time her reaſonable Eſtovers of the common. And for her Dower

ſhall be aſſigned unto her the third Part of all the Lands of her Huſband which were his during Coverture, except ſhe we were endowed of leſs at the Church-door. No Widow ſhall be diſtrained to marry herſelf: nevertheleſs ſhe ſhall find Surety, that ſhe ſhall not marry without our Licence and Aſſent (if ſhe hold of us) nor without the Aſſent of the Lord, if ſhe hold of another. Stat. 20 H. 3. 1.

CAP. VIII.

How Sureties ſhall be charged to the King.

WE or our Bailiffs ſhall not ſeize any Land or Rent for any Debt, as long as the preſent Goods and Chattels of the Debtor do ſuffice to pay the Debt, and the Debtor himſelf be ready to ſatisfy therefore. Neither ſhall the Pledges of the Debtor be diſtrained, as long as the principal Debtor is ſufficient for the Payment of the Debt. And if the principal Debtor fail in Payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the Pledges ſhall anſwer for the Debt. And if they will, they ſhall have the Lands and Rents of the Debtor until they be ſatisfied of that which they before paid for him, except that the Debtor can ſhew himſelf to be acquitted againſt the ſaid Sureties. Cap. 18. infra, 33 H. 8. c. 39.

CAP.

CAP. IX.

The Liberties of LONDON and other Cities and Towns confirmed.

THE City of *London* ſhall have all the old Liberties and Cuſtoms which it hath been uſed to have. Moreover we will and grant, that all other Cities, Boroughs, Towns and the Barons of the five Ports, and all other Ports, ſhall have all their Liberties and free Cuſtoms. 3 Bulſtr. 2.

CAP. X.

None ſhall diſtrain for more Service than is due.

NO Man ſhall be diſtrained to do more Service for a Knight's Fee nor for any Freehold, than therefore is due. Regiſt. f. 4. V. N. B. f. 15. F. N. B. f. 10. D. Co. Inſt. 2 par. 21.

CAP. XI.

Common Pleas ſhall not follow the King's Court.

COMMON Pleas ſhall not follow our Court, but ſhall be holden in ſome Place certain. Regiſt. fo. 187. V. N. B. fo. 137. Stat. 28 Ed. 1. 4. Co. Inſt. 4 par. 99. Mirror, 311. 11 Co. 75. 2 Bulſtr. 123.

CAP. XII.

Where and before whom Aſſizes ſhall be taken. Adjournment for Difficulty.

ASSIZES of *Novel diſſeiſin* and of *Mortdanceſtor*, ſhall not be taken but in the Shires, and after this Manner: If we be out of this Realm, our chief Juſticers ſhall ſend our Juſticers through every County once in the Year, which, with the Knights of the Shires, ſhall take the ſaid Aſſizes in thoſe Counties: and thoſe Things that at the coming of our foreſaid Juſticers, being ſent to take thoſe Aſſizes in the Counties, cannot be determined, ſhall be ended by them in ſome other Place in their Circuit. And thoſe Things which for Difficulty of ſome Articles cannot be determined by them, ſhall be referred to our Juſticers of the Bench, and there ſhall be ended. Regiſt. fo. 197. Stat. 13 Ed. 1. 30.

CAP. XIII.

Aſſizes of Darrein Preſentment.

ASSIZES of *Darrein Preſentment* ſhall be alway taken before our Juſticers of the Bench, and there ſhall be determined. Regiſt. fo. 30, Stat. 13 Ed. 1. 30.

CAP.

CAP. XIV.

How Men of all Sorts ſhall be amerced, and by whom.

A Freeman ſhall not be amerced for a ſmall Fault, but after the Manner of the Fault. And for a great Fault after the Greatneſs thereof, ſaving to him his Contentment. And a Merchant likewiſe, ſaving to him his Merchandize. And any others Villain than ours ſhall be likewiſe amerced, ſaving his Waintage, if he fall into our Mercy. And none of the ſaid Amerciaments ſhall be aſſeſſed, but by the Oath of honeſt and lawful Men of the Vicinage. Earls and Barons ſhall not be amerced but by their Peers, and after the Manner of their Offence. No Man of the Church ſhall be amerced after the Quantity of his ſpiritual Benefice, but after his Lay-tenement, and after the Quantity of his Offence.

CAP. XV.

Making of Bridges and Banks.

NO Town nor Freeman ſhall be diſtrained to make Bridges nor Banks, but ſuch as of old Time and of right have been accuſtomed to make them in the Time of King *Henry* our Grandfather.

CAP. XVI.

Defending of the Banks.

NO Banks ſhall be defended from henceforth, but ſuch as were in Defence in the Time of King *Henry* our Grandfather, by the ſame Places and the ſame Bounds as they were wont to be in his Time.

CAP. XVII.

Holding Pleas of the Crown.

NO Sheriff, Conſtable, Eſcheator, Coroner, nor any other our Bailiffs, ſhall hold Pleas of our Crown. Mirror 313.

CAP. XVIII.

The King's Debtor dying, the King ſhall be firſt paid.

IF any that holdeth of us Lay-fee do die, and our Sheriff or Bailiff do ſhow our Letters Patents of our Summons for Debt, which the dead Man did owe to us: It ſhall be lawful to our Sheriff or Bailiff to attach and inroll all the Goods and Chattels of the Dead, being found in the ſaid Fee, to the Value of the ſame Debt, by the Sight and Teſtimony of lawful Men. So that nothing thereof ſhall be taken away, until we be clearly paid off the Debt. And the Reſidue ſhall remain to the Executors to perform

form the Teſtament of the Dead. And if nothing be owing unto us, all the Chattels ſhall go to the Uſe of the Dead, (ſaving to his Wife and Children their reaſonable Parts.) St. 33. H. 8. 39.

CAP. XIX.

Purveyance for a Caſtle.

NO Conſtable, nor his Bailiff, ſhall take Corn or other Chattels of any Man, if the Man be not of the Town where the Caſtle is, but he ſhall forthwith pay for the ſame, unleſs that the Will of the Seller was to reſpite the Payment. And if he be of the ſame Town, the Price ſhall be paid unto him within forty Days. Stat. 3 Ed. 1. 7. Altered 13 Car. 2. cap. 8.

CAP. XX.

Doing of Caſtle-ward.

NO Conſtable ſhall diſtrain any Knight for to give Money for keeping of his Caſtle, if he himſelf will do it in his proper Perſon, or cauſe it to be done by another ſufficient Man, if he may not do it himſelf for a reaſonable Cauſe. And if we do lead or ſend him in an Army, he ſhall be free from Caſtle-ward for the Time that he ſhall be with us in Fee in our Hoſt, for the which he hath done Service in our Wars. Co. Inſt. 70. a. Co. Inſt. 2. par. 34. St. 12 Car. 2. c. 24.

CAP.

CAP. XXI.

Taking of Horſes, Carts, and Woods.

NO Sheriff nor Bailiff of ours, or any other, ſhall take the Horſes or Carts of any Man to make Carriage, except he pay the old Price limited, that is to ſay, for Carriage with two Horſe, ten Pence a Day; for three Horſe, fourteen Pence a Day. No demeſne Cart of any ſpiritual Perſon or Knight, or any Lord, ſhall be taken by our Bailiffs; nor we, nor our Bailiffs, nor any other, ſhall take any Man's Wood for our Caſtles or other our Neceſſaries to be done, but by the Licence of him whoſe the Wood is. Stat. 14 Ed. 3. 19. St. 25 Ed. 3. 6. St. 13 Car. 2. c. 8.

CAP. XXII.

How long Felons Lands ſhall be holden by the King.

WE will not hold the Lands of them that be convict of Felony but one Year and one Day, and then thoſe Lands ſhall be delivered to the Lords of the Fee. V. N. B. f. 99. Mirror 313.

CAP. XXIII.

In what Places Wears ſhall be put down.

ALL Wears from henceforth ſhall be utterly put down by *Thames* and *Medway*, and through all *England*, but only by the Sea-coaſts. Stat. 12 Ed. 4. 7. Co. Inſt. 2. par. 38.

CAP. XXIV.

In what Caſe a Præcipe in capite is not grantable.

THE Writ that is called *Præcipe in capite*, ſhall be from henceforth granted to no Perſon of any Freehold, whereby any Freeman may loſe his Court. V. N. B. fol. 12. F. N. B. fol. 5. f. 39. h. Co. Inſt. 2 par. 39.

CAP. XXV.

There ſhall be but one Meaſure throughout the Realm.

ONE Meaſure of Wine ſhall be through our Realm, and one Meaſure of Ale, and one Meaſure of Corn, that is to ſay, the Quarter of *London*; and one Breadth of died Cloth, Ruſſets and Haberjects, that is to ſay, two Yards within the Liſts. And it ſhall be of Weights as it is of Meaſures. St. 14 Ed. 3. 12. St. 27 Ed. 3. 10. St. 8 H. 6. 5. 11 H. 7. 4. 1. St. 17. Car. 1. cap. 19.

CAP.

CAP. XXVI.

Inquiſition of Life and Member.

NOTHING from henceforth ſhall be given for a Writ of Inquiſition, nor taken of him that prayeth Inquiſition of Life or of Member, but it ſhall be granted freely, and not denied. St. 3 Ed. 1. 11. St. 13 Ed. 1. 29. Regiſt. fo. 133. 134. Mirror 314.

CAP. XXVII.

Tenure of the King in Socage, and of another by Knights Service. Petit Serjeanty.

IF any do hold of us by Fee-farm, or by Socage or Burgage, and he holdeth Lands of another by Knights Service, we will not have the Cuſtody of his Heir nor of his Land, which is holden of the Fee of another, by Reaſon of that Fee-farm, Socage or Burgage. Neither will we have the Cuſtody of ſuch Fee-farm, or Socage, or Burgage, except Knights Service be due unto us out of the ſame Fee-farm. We will not have the Cuſtody of the Heir, or of any Land, by Occaſion of any Petit Serjeanty that any Man holdeth of us by Service to pay a Knife, an Arrow, or the like. Rep. 12 Car. 2. cap. 24.

CAP.

CAP. XXVIII.

Wager of Law ſhall not be without Witneſs.

NO Bailiff from henceforth ſhall put any Man to his open Law, nor to an Oath, upon his own bare ſaying, without faithful Witneſſes brought in for the ſame. Co. Inſt. 2 par. 44.

CAP. XXIX.

None ſhall be condemned without Trial. Juſtice ſhall not be ſold or deferred.

NO Freeman ſhall be taken or impriſoned, or be diſſeiſed of his Freehold, or Liberties, or free Cuſtoms, or be outlawed or exiled, or any otherwiſe deſtroyed, nor we will not paſs upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We will ſell to no Man, we will not deny or defer to any Man either Juſtice or Right. St. 2 Ed. 3. 8. St. 5 Ed. 3. 9. St. 14 Ed. 3. 14. 28 Ed. 3. 3. St. 11. R. 2. 10. 17 Car. 1. cap. 10. St. 37 Ed. 3. cap. 18. St. 4 H. 7. 12. in fine. 1 Roll 208, 209, 225. 12 Co. 50, 63, 93.

CAP.

CAP. XXX.

Merchant Strangers coming into this Realm ſhall be well uſed.

ALL Merchants (if they were not openly prohibited before) ſhall have their ſafe and ſure Conduct to depart out of *England*, to come into *England*, to tarry in and go through *England*, as well by Land as by Water, to buy and ſell without any Manner of evil Tolls by the old and rightful Cuſtoms, except in Time of War. And if they be of a Land making War againſt us, and be found in our Realm at the Beginning of the Wars, they ſhall be attached without Harm of Body or Goods, until it be known unto us, or our Chief Juſtice, how our Merchants be intreated there in the Land making War againſt us. And if our Merchants be well intreated there, theirs ſhall be likewiſe with us. Stat. 9 Ed. 3. 1. 14 Ed. 3. 2. 2 Seſſ. 25 Ed. 3. 2. 2 R. 2. 1. 11 R. 2. 7.

CAP. XXXI.

Tenure of a Barony coming into the King's Hands by Eſchete.

IF any Man hold of any Eſchete, as of the Honour of *Wallingford*, *Nottingham*, *Boloin*, or of any other Eſchetes which be in our Hands, and

and are Baronies, and die, his Heir ſhall give none other Relief, nor do none other Service to us then he ſhould to the Baron, if it were in the Baron's Hand. And we in the ſame wiſe ſhall hold it as the Baron held it, neither ſhall we have by Occaſion of any Barony or Eſchete, any Eſchete or keeping of any of our Men, unleſs he that held the Barony or Eſchete, otherwiſe held of us in Chief. Regiſt. fo. 184. Stat. 1 Ed. 3. 13. St. 1 Ed. 6. 4. Co. Inſt. 2 part.

CAP. XXXII.

Lands ſhall not be aliened to the Prejudice of the Lord's Service.

NO Freeman from henceforth ſhall give or ſell any more of his Land, but ſo that of the Reſidue of the Lands the Lord of the Fee may have the Services due to him which belongeth to the Fee. St. 18 Ed. 1. Quia emptores terrarum, Mirror 316.

CAP. XXXIII.

Patrons of Abbies ſhall have the Cuſtody of them in the Time of Vacation.

ALL Patrons of Abbies which have the King's Charters of *England* of Advowſon, or have old Tenure or Poſſeſſion in the ſame, ſhall

ſhall have the Cuſtody of them when they fall void, as it hath been accuſtomed, and as it is afore declared. Co. Inſt. 2 par. 68.

CAP. XXXIV.

In what only Caſe a Woman ſhall have an Appeal of Death.

NO Man ſhall be taken or impriſoned upon the Appeal of a Woman for the Death of any other than her Huſband. Raſt. pla. fo. 43. Co. Inſt. 2 par. 68.

CAP. XXXV.

At what Time ſhall be kept a Country-court, Sheriff's Turn, and a Leet.

NO County from henceforth ſhall be holden but from Month to Month; and where greater Time hath been uſed, there ſhall be greater: nor any Sheriff or his Bailiff ſhall keep his Turn in the Hundred but twice in the Year: and no where but in due Place and accuſtomed, that is to ſay, once after *Eaſter*, and again after the Feaſt of Saint *Michael*. And the View of *Frankplege* ſhall be likewiſe at the Feaſt of Saint *Michael* without Occaſion. So that every Man may have his Liberties, which he had, or uſed to have in the Time of King *Henry* our Grandfather, or which he hath purchaſed

chaſed ſince. The View of *Frankplege* ſhall be ſo done that our Peace may be kept. And that the Tything be wholly kept as it hath been accuſtomed. And that the Sheriff ſeek no Occaſions, and that he be content with ſo much as the Sheriff was wont to have for his View making in the Time of King *Henry* our Grandfather. Regiſt. fo. 175, 187. F. N. B. fo. 161. St. 31 Ed. 3. 15.

CAP. XXXVI.

No Land ſhall be given in Mortmain.

IT ſhall not be lawful from henceforth to any to give his Lands to any religious Houſe, and to take the ſame Land again to hold of the ſame Houſe. Nor ſhall it be lawful to any Houſe of Religion to take the Lands of any, and to leaſe the ſame to him of whom he received it: if any from henceforth give his Lands to any religious Houſe, and thereupon be convict, the Gift ſhall be utterly void, and the Land ſhall accrue to the Lord of the Fee.

CAP. XXXVII.

A Subſidy in reſpect of this Charter, and the Charter of the Foreſt, granted to the King.

ESCUAGE from henceforth ſhall be taken like as it was wont to be in the Time of King *Henry* our Grandfather; reſerving to all Archbiſhops,

biſhops, Biſhops, *&c.* Earls, Barons, and all Perſons as well ſpiritual as temporal, all their free Liberties and free Cuſtoms, which they have had in Time paſſed. And all theſe Cuſtoms and Liberties aforeſaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs, we ſhall obſerve. And all Men of this our Realm, as well ſpiritual as temporal (as much as in them is) ſhall obſerve the ſame againſt all Perſons in like wiſe. And for this our Gift and Grant of theſe Liberties, and of all other contained in our Charter of Liberties of our Foreſt, the Archbiſhops, Biſhops, *&c.* Earls, Barons, Knights, Freeholders, and other our Subjects, have given unto us the fifteenth Part of all their Moveables. And we have granted unto them on the other Part, that neither we nor our Heirs ſhall procure or do any Thing, whereby the Liberties in this Charter contained, ſhall be infringed or broken. And if any Thing be procured by any Perſon, contrary to the Premiſes, it ſhall be had of no Force nor Effect. Theſe being Witneſſes, Lord *B.* Archbiſhop of *Canterbury*, *E.* Biſhop of *London*, *I.* Biſhop of *Bath*, *P.* of *Wincheſter*, *H.* of *Lincoln*, *R.* of *Saliſbury*, *W.* of *Rocheſter*, *W.* of *Worceſter*, *J.* of *Ely*, *H.* of *Hereford*, *R.* of *Chicheſter*, *W.* of *Exeter*, Biſhops: the Abbot of St. *Edmunds*, the Abbot of St. *Albans*, the Abbot of *Bello*, the Abbot of St. *Auguſtines* in *Canterbury*, the Abbot of *Eveſham*, the Abbot of *Weſtminſter*, the Abbot of *Bourgh* St. *Peter*, the Abbot

Abbot of *Reding*, the Abbot of *Abindon*, the Abbot of *Malmſbury*, the Abbot of *Winchcomb*, the Abbot of *Hyde*, the Abbot of *Certeſey*, the Abbot of *Sherburn*, the Abbot of *Cerue*, the Abbot of *Abbotebir*, the Abbot of *Middleton*, the Abbot of *Seleby*, the Abbot of *Cirenceſter*: *H. de Burgh* Juſtice, *H.* Earl of *Cheſter* and *Lincoln*, *W.* Earl of *Saliſbury*, *W.* Earl of *Warren*, *G. de Clare* Earl of *Glouceſter* and *Hereford*, *W. de Ferrars* Earl of *Derby*, *W. de Mandeville* Earl of *Eſſex*, *H. de Bygot* Earl of *Norfolk*, *W.* Earl of *Albemarle*, *H.* Earl of *Hereford*, *J.* Conſtable of *Cheſter*, *R. de Ros*, *R. Fitzwater*, *R. de Vyponte*, *W. de Bruer*, *R. de Munteſichet*, *P. Fitzherbert*, *W. de Aubenie*, *J. Greſly*, *F. de Breus*, *J. de Movenne*, *J. Fitzallen*, *H. de Mortimer*, *W. de Beauchamp*, *W. de St. John*, *P. de Mauly*, *Brian de Liſle*, *Thomas de Multon*, *R. de Argenteyn*, *G. de Nevil*, *W. Manduit*, *J. de Balun*, and others.

II. We, ratifying and approving theſe Gifts and Grants aforeſaid, confirm and make ſtrong all the ſame for us and our Heirs perpetually; And by the Tenor of theſe Preſents do renew the ſame, willing and granting for us and our Heirs, that this Charter, and all and ſingular his Articles for ever ſhall be ſtedfaſtly, firmly, and inviolably obſerved. And if any Article in the ſame Charter contained yet hitherto peradventure hath not been kept, we will and, by Authority royal, command from henceforth firmly

firmly they be obſerved. In Witneſs whereof we have cauſed theſe our Letters Patents to be made. *T. Edward* our Son at *Weſtminſter*, the twenty-eighth Day of *March*, in the twenty-eighth Year of our Reign.

Notes on the 29th Chapter of Magna Charta.

THE twenty-ninth Chapter beginning with NO FREEMAN SHALL BE TAKEN, *&c.* deſerves to be inſcribed in capital Letters of Gold on all our Courts of Juſtice, Town-Halls, and moſt public Edifices, as being the Elixir of our Engliſh Freedoms, and Store-houſe of all our Liberties. And becauſe my Lord *Coke*, in the ſecond Book of his Inſtitutes, has many excellent Obſervations, they ſhall be here recited in his own Words.

1. *That no Man be taken or impriſoned*, but *per Legem Terræ*, that is, by the common Law, Statute Law or Cuſtom of *England:* For theſe Words *Legem Terræ*, being towards the End of the Chapter, do refer to all the precedent Matters in this Chapter; and this hath the firſt Place, becauſe the Liberty of a Man's Perſon is more precious to him than all the reſt that follow, and therefore it is great Reaſon that he ſhould, by Law, be relieved therein, if he be wronged, as hereafter ſhall be ſhewed.

2. *No*

2. *No Man ſhall be diſſeiſed*, that is, put out of Seiſin, or diſpoſſeſſed of his Freehold, that is, Lands or Livelihood, or of his Liberties or free Cuſtoms, that is of ſuch Franchiſes, and Freedoms, and free Cuſtoms, as belong to him by his free Birth-right, unleſs it be by the lawful Judgment, that is, Verdict of his Equals, that is, of Men of his own Condition, or by the Law of the Land, that is, to ſpeak it once for all, by the due Courſe and Proceſs of Law.

3. *No Man ſhall be outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unleſs he be outlawed according to the Law of the Land.

4. *No Man ſhall be exiled*, or baniſhed out of his Country, that is, *Nemo perdet Patriam*, no Man ſhall loſe his Country, unleſs he be exiled according to the Law of the Land.

5. *No Man ſhall in any Sort be deſtroyed*, *Deſtruere id eſt quod prius ſtructum & factum fuit penitus Evertere & Diruere*, unleſs it be by the Verdict of his Equals, or according to the Law of the Land.

6. No Man ſhall be condemned at the King's Suit, either before the King in his Bench, where the Pleas are *Coram Rege*, and ſo are the Words, *Nec ſuper eum ibimus*, to be underſtood, nor before any other Commiſſioner or Judge whatſoever, and ſo are the Words, *Nec ſuper eum Mittimus*, to be underſtood, but by the Judgment of his Peers, that is, Equals, or according to the Law of the Land.

7. We

7. We ſhall ſell to no Man Juſtice or Right.
8. We ſhall deny to no Man Juſtice or Right.
9. We ſhall defer to no Man Juſtice or Right.

Each of theſe we ſhall briefly explain.

1. No Man ſhall be taken, that is, reſtrained of Liberty, by Petition, or Suggeſtion to the King, or his Council, unleſs it be by Indictment, or Preſentment of good and lawful Men where ſuch Deeds be done.

2. No Man ſhall be diſſeiſed, *&c.* Hereby is intended, that Lands, Tenements, Goods, and Chattels, ſhall not be ſeized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Man ſhall be diſſeiſed of his Lands or Tenements, or diſpoſſeſſed of his Goods and Chattels contrary to the Law of the Land.

A Cuſtom was alledged in the Town of *C.* that if the Tenant ceaſe by two Years, that the Lord ſhould enter into the Freehold of the Tenement, and hold the ſame until he were ſatisfied of the Arrearages: It was adjudged a Cuſtom againſt the Law of the Land, to enter into a Man's Freehold in that Caſe, without Action or Anſwer.

King *Henry* VI. granted to the Corporation of Dyers within *London*, Power to ſearch, *&c.* And if they found any Cloth died with Logwood, that the Cloth ſhould be forfeit: And it was adjudged, that this Charter concerning the Forfeiture, was againſt the Law of the Land, and

and this Statute; for no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelihood without Anſwer.

3. No Man outlawed.] That is, barred to have the Benefit of the Laws. And note, to this Word *Outlawed*, theſe Words, *unleſs by the Law of the Land*, do refer. [*of his Liberties.*] This Word hath three Significations:

1. As it hath been ſaid, it ſignifieth the Laws of the Realm, in which reſpect this Charter is called *Charta Libertatum*, as aforeſaid.

2. It ſignifieth the Freedom the Subjects of *England* have: For Example, the Company of Merchant-Taylors of *England* having Power, by their Charter, to make Ordinances, made an Ordinance, that every Brother of the ſame Society, ſhould put the one Half of his Cloaths to be dreſſed by ſome Cloath-workers free of the ſame Company, upon Pain to forfeit ten Shillings, *&c.* And it was adjudged, that this Ordinance was againſt Law, becauſe it was againſt the Liberty of the Subject, for every Subject hath Freedom to put his Cloaths to be dreſſed by whom he will, *& Sic de Similibus.* And ſo it is, if ſuch or the like Grant had been made by his Letters Patents.

3. *Liberties* ſignify the Franchiſes and Privileges which the Subjects have of the Gift of the King, as the Goods and Chattels of Felons, Outlaws, and the like; which the Subject claims by Preſcription, as Wreck, Waife, Stray, and the like.

So likewiſe, and for the ſame Reaſon, if a Grant be made to any Man, to have the ſole making of Cards, or the ſole dealing with any other Trade; that Grant is againſt the Liberty and Freedom of the Subject, that before did or lawfully might have uſed the Trade, and conſequently againſt this great Charter.

Generally all Monopolies are againſt this great Charter, becauſe they are againſt the Liberty and Freedom of the Subject, and againſt the Law of the Land.

4. *No Man exiled*, that is baniſhed, or forced to depart or ſtay out of *England*, without his Conſent. By the Law of the Land, no Man can be exiled or baniſhed out of his native Country, but either by Authority of Parliament, or in Caſe of Abjuration for Felony by the common Law; and ſo when our Books, or any Record, ſpeak of Exile, or Baniſhment, other than in caſe of Abjuration, it is to be intended to be done by Authority of Parliament, as *Belknap* and other Judges, *&c.* baniſhed into *Ireland* in the Reign of *Richard* the Second.

This is a beneficial Law, and is conſtrued benignly; and therefore the King cannot ſend any Subject of *England* againſt his Will, to ſerve him out of this Realm, for that would be an Exile, and he ſhould *perdere Patriam:* No, he cannot be ſent againſt his Will into *Ireland*, to ſerve the King or his Deputy there, becauſe it is out of the Realm of *England:* For if the King might ſend him out of his Realm to any Place, then

then under Pretence of Service, as Ambaſſador, or the like, he might ſend him into the fartheſt Part of the World, which being an Exile, is prohibited by this Act.

5. *No Man deſtroyed*, that is, forejudged of Life or Limb, or put to Torture, or Death, every Oppreſſion againſt Law, by Colour of any uſurped Authority, is a kind of Deſtruction. And the Words *Aliquo Modo*, any otherwiſe, are added to this Verb, *deſtroyed*, and to no other Verb in this Chapter; and therefore all Things, by any manner of Means, tending to Deſtruction are prohibited; as if a Man be accuſed or indicted of Treaſon or Felony, his Lands or Goods cannot be granted to any; no not ſo much as by Promiſe, nor any of his Lands or Goods ſeized into the King's Hands before he be attainted: For, when a Subject obtaineth a Promiſe of the Forfeiture, many times undue Means, and more violent Proſecution is uſed for private Lucre, tending to Deſtruction, than the quiet and juſt Proceeding of the Law would permit, and the Party ought to live of his own until Attainder.

6. *By lawful Judgment of his Peers.*] That is, by his Equals, Men of his own Rank and Condition. The general Diviſion of Perſons, by the Law of *England*, is either one that is noble, and in reſpect of his Nobility of the Lords Houſe of Parliament, or one of the Commons, and in reſpect thereof, of the Houſe of Commons in Parliament. And as there be divers Degrees

of Nobility, as Dukes, Marquiſſes, Earls, Viſcounts and Barons, and yet all of them are comprehended under this Word, *Peers*, and are Peers of the Realm: So of the Commons, there be Knights, Eſquires, Gentlemen, Citizens, and Yeomen (and yet all of them of the Commons of the Realm.) And as every of the Nobles is one a Peer to another, though he be of a ſeveral Degree, ſo it is of the Commons; and as it hath been ſaid of Men, ſo doth it hold of Noble Women, either by Birth or Marriage.

And foraſmuch, as this Judgment by Peers is called lawful, it ſhews the Antiquity of this manner of Trial: it was the ancient, accuſtomed legal Courſe long before this Charter.

Or by the Law of the Land.] That is, by due Proceſs of Law, for ſo the Words are expreſsly expounded by the Statute of the Twenty-third of *Edward* the Third, Chap. 8. And theſe Words are ſpecially to be referred to thoſe foregoing, to whom they relate. As none ſhall be condemned without a lawful Trial by his Peers, ſo none ſhall be taken, impriſoned, or put out of his Freehold, without due Proceſs of the Law, that is by Indictment or Preſentment of good and lawful Men of the Place, in due Manner, or by Writ original of the common Law.

Now ſeeing that no Man can be taken, arreſted, attached, or impriſoned, but by due Proceſs of Law, and according to the Law of the Land, theſe Concluſions hereupon do follow.

1. That

1. That the Perſon or Perſons which commit any, muſt have lawful Authority.

2. It is neceſſary that the Warrant, or *Mittimus*, be lawful, and that muſt be in Writing under his Hand and Seal.

3. The Cauſe muſt be contained in the Warrant, as for Treaſon, Felony, *&c.* Suſpicion of Treaſon, Felony, or the like particular Crime; for if it do not thus ſpecify the Cauſe, if the Priſoner bring his *Habeas Corpus*, he muſt be diſcharged, becauſe no Crime appears on the Return; nor is it in ſuch Caſe, any Offence at all, if the Priſoner makes his Eſcape; whereas if the *Mittimus* contains the Cauſe, the Eſcape would reſpectively be Treaſon or Felony, though in Truth he were not guilty of the firſt Offence. And this mentioning the Cauſe is agreeable to Scripture, *Acts* v.

4. The Warrant, or *Mittimus*, containing a lawful Cauſe, ought to have a lawful Concluſion, *&c.* and him ſafely keep until he be delivered by Law, *&c.* and not until the Party committing ſhall farther order.

If any Man, by Colour of any Authority, where he hath not any in that particular Caſe, ſhall preſume to arreſt, or impriſon any Man, or cauſe him to be arreſted or impriſoned, this is againſt this Act, and it is moſt hateful, when it is done by Countenance of Juſtice. King *Edward* the Sixth did incorporate the Town of St. *Albans*, and granted to them to make Ordinances, *&c.* They made a By-law upon Pain of Impriſonment,

and it was adjudged to be againſt this Statute of *Magna Charta*; ſo it had been, if ſuch an Ordinance had been contained in the Patent itſelf.

We will ſell to no Man, deny to no Man, &c.] That is ſpoken in the Perſon of the King, who in Judgment of Law, in all his Courts of Juſtice, is preſent: And therefore every Subject of this Realm, for Injury done to him, *in Bonis, Terris, vel Perſona*, in Perſon, Lands, or Goods, by any other Subject, eccleſiaſtical or temporal, whatever he be, without Exception, may take his Remedy by the Courſe of Law, and have Juſtice and Right for the Injury done him, *freely*, without Sale, *fully*, without Denial; and *ſpeedily*, without Delay; for Juſtice muſt have three Qualities, it muſt be *Libera*, Free; for nothing is more odious than Juſtice ſet to ſale: *Plena*, full; for Juſtice ought not to limp, or be granted by Piece-Meal: And *Celeris*, ſpeedy; *Quia Dilatio eſt quædam negatio*, Delay is a Kind of Denial: And when all theſe meet, it is both Juſtice and Right.

We will not deny or delay any Man, &c.] Theſe Words have been excellently expounded by latter Acts of Parliament, that by no Means common Right, or common Law ſhould be diſturbed or delayed; no, though it be commanded under the great Seal, or privy Seal, Order, Writ, Letters, Meſſage, or Commandment whatſoever, from the King or any other; and that the Juſtices ſhall proceed, as if no ſuch Writs, Letters, Order,

der, Meſſage, or other Commandment were come to them: all our Judges ſwear to this; for it is Part of their Oaths, ſo that if any ſhall be found wreſting the Law to ſerve a Court Turn, they are perjured as well as unjuſt. The common Laws of the Realm ſhould by no Means be delayed, for the Law is the ſureſt Sanctuary that a Man can take, and the ſtrongeſt Fortreſs to protect the weakeſt of all; *Lex eſt tutiſſima Caſſis*, the Law is a moſt ſafe Head-piece, and *ſub legis Clypeo Nemo decipitur*, No Man is deceived whilſt the Law is his Buckler: But the King may ſtay his own Suit, as a *Capias pro fine*, for the King may reſpite his Fine, and the like.

All Protections that are not legal, which appear not in the Regiſter, nor warranted in our Books, are expreſsly againſt this Branch, *Nulli deferemus*, we will not delay any Man: As a protection under the great Seal, granted to any Man, directed to the Sheriff, *&c.* and commanding them that they ſhall not arreſt him, during a certain Time, at any other Man's Suit, which hath Words in it, *Per Prærogativam noſtram quam nolumus eſſe Arguendam*; by our Prerogative which we will not have diſputed; yet ſuch Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As Mich 11. H. 7. Rot. 124. a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants, and Deputies, *&c.* Reſolved to be againſt Law. Paſch. 7. H. 8. Rot. 66. ſuch a Protection is diſallowed, and the Sheriff amerced for not

executing the Writ, Mich. 13. and 14. Eliz. in *Hitchcock*'s Caſe, and many other of latter Time: And there is a notable Record of ancient Time, in 22 Ed. 1. *John de Merſhal*'s Caſe; *Non pertinet ad Vicecomitem de protectione Regis Judicare, imo ad Curiam.*

Juſtice or Right.] We ſhall not ſell, deny, or delay, Juſtice and Right; neither the End, which is Juſtice; nor the mean, whereby we may attain to the End, and that is Law: Right is taken here for Law, in the ſame Senſe that Juſtice often is ſo called. 1. Becauſe it is the right Line, whereby Juſtice diſtributive is guided and directed; and therefore all the Commiſſioners of Oyer and Terminer, of Goal-delivery of the Peace, *&c.* have this Clauſe, *Facturi quod ad Juſtitiam pertinet, ſecundum Legem & Conſuetudinem Angliæ*; that is to do Juſtice and Right, according to the Rule of the Law and Cuſtom of *England*: And that which is called common Right, in 2 E. 3. is called common Law in 14 E. 3, *&c. It a quod ſtat rectus in Curia, id eſt Legi in Curia.*

2. The Law is called *Rectum*, becauſe it diſcovereth that which is tort, crooked or wrong; for as Right ſignifieth Law, ſo tort, crooked, or wrong, ſignifieth Injuries; and *Injuria eſt contra Jus*, Injury is againſt Right: *Recta Linea eſt Index ſui & Obliqui*, a right Line is both declaratory of itſelf and the oblique. Hereby the crooked Cord of that which is called Diſcretion, appeareth to be unlawful, unleſs you take it as it ought to be, *Diſcretio eſt diſcernere per Legem, quid*

quid ſit juſtum, Diſcretion is to diſcern by the Law what is juſt.

3. It is called Right, becauſe it is the beſt Birth-right the Subject hath, for thereby his Goods, Lands, Wife, and Children, his Body, Life, Honour and Eſtimation are protected from Injury and Wrong; *Major Hæreditas venit unicuique noſtrum a Jure & Legibus, quam a Parentibus*; a greater Inheritance deſcends to us from the Laws, than from our Progenitors.

Thus far are the Words of that great Oracle of our Law, the learned Lord Chief Juſtice *Coke*, which are ſo full and explicit upon this excellent Chapter, that it would be ſuperfluous, and even too aſſuming, to ſay any thing further upon it.

The Sentence or Curſe given by the Biſhops againſt the Breakers of the Great Charter.

IN the Year of our Lord one Thouſand two Hundred and Fifty-three, the third Day of *May*, in the great Hall of the King at *Weſtminſter*, in the Preſence, and by the Aſſent of the Lord *Henry*, by the Grace of God, King of *England*, and the Lord *Richard* Earl of *Cornwal* his Brother, *Roger Bigot* Earl of *Norfolk* and *Suffolk*, Marſhal of *England*, *Humphrey* Earl of *Hereford*, *Henry* Earl of *Oxford*, *John* Earl *Warren*, and other Eſtates of the Realm of *England*; *William Boniface*,

face, by the Mercy of God Archbiſhop of *Canterbury*, Primate of *England*, *F.* of *London*, *H.* of *Ely*, *S.* of *Worceſter*, *E.* of *Lincoln*, *W.* of *Norwich*, *G.* of *Hereford*, *W.* of *Saliſbury*, *W.* of *Durham*, *R.* of *Exeter*, *M.* of *Carliſle*, *W.* of *Bath*, *E.* of *Rocheſter*, *T.* of St. *David's*, Biſhops apparelled in Pontificals, with Tapers burning, againſt the Breakers of the Church's Liberties, or of the Liberties or other Cuſtoms of the Realm of *England*, and namely, of theſe which are contained in the Charter of the common Liberties of *England*, and Charter of the Foreſt, have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, the Son, and of the Holy Ghoſt, and of the glorious Mother of God, and perpetual Virgin *Mary*, of the Bleſſed Apoſtles *Peter* and *Paul*, and of all Apoſtles, and of all Martyrs, of Bleſſed *Edward* King of *England*, and of all the Saints of Heaven; We excommunicate, accurſe, and from the Benefits of our holy Mother Church, we ſequeſter all thoſe that hereafter willingly and maliciouſly deprive or ſpoil the Church of her Right: And all thoſe that by any Craft or Wilineſs do violate, break, diminiſh, or change the Church's Liberties, and free Cuſtoms contained in the Charters of the common Liberties, and of the Foreſt, granted by our Lord the King, to Archbiſhops, Biſhops, and other Prelates of *England*; and likewiſe to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that ſecretly, or openly,

openly, by Deed, Word, or Council, do make Statutes, or obſerve them being made, and that bring in Cuſtoms, or keep them when they be brought in, againſt the ſaid Liberties, or any of them, the Writers, the Law-makers, Counſellors, and the Executioners of them, and all thoſe that ſhall preſume to judge againſt them. All and every which Perſons before-mentioned, that wittingly ſhall commit any of the Premiſes, let them well know, that they incur the aforeſaid Sentence, *ipſo facto*, [*i. e.* upon the Deed done]. And thoſe that commit ought ignorantly, and be admoniſhed, except they reform themſelves within fifteen Days after the Time of their Admonition, and make full Satisfaction for that they have done at the Will of the Ordinary, ſhall be from that Time forth wrapped in the ſaid Sentence; and with the ſame Sentence we burden all thoſe that preſume to diſturb the Peace of our Sovereign Lord the King, and of the Realm. To the perpetual Memory of which Thing, we the aforeſaid Prelates have put our Seals to theſe Preſents.

A Confirmation of the Charters of the Liberties of England, *and of the Foreſt made in the thirty-fifth Year of* Edward *the Firſt.*

EDWARD, by the Grace of God, King of *England*, Lord of *Ireland*, and Duke of *Guyan*, to all thoſe theſe preſent Letters ſhall hear or ſee, Greeting. Know ye, that we, to the Honour of God, and of Holy Church, and to the Profit of our Realm, have granted for us and our Heirs, that the Charter of Liberties, and the Charter of the Foreſt, which were made by common Aſſent of all the Realm, in the Time of King *Henry* our Father, ſhall be kept in every Point without Breach, and we will, that the ſame Charters ſhall be ſent under our Seal, as well to our Juſtices of the Foreſt, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it ſhall be contained, that they cauſe the aforeſaid Charters to be publiſhed, and to declare to the People, that we have confirmed them in all Points. And that our Juſtices, Sheriffs, Mayors and other Miniſters, which under us have the Laws of our Land to guide, ſhall allow the ſame Charters pleaded before them in Judgment in all their Points, that is, to wit, the Great Charter as the common Law, and the Charter of the Foreſt, for the Wealth of our Realm.

Chap.

Chap. 2. And we will, that if any Judgment be given from henceforth, contrary to the Points of the Charters aforeſaid, by the Juſticers, or by any other our Miniſters, that hold Plea before them, againſt the Points of the Charters, it ſhall be undone, and holden for nought.

Chap. 3. And we will, that the ſame Charters ſhall be ſent under our Seal, to Cathedral Churches throughout our Realm, there to remain, and ſhall be read before the People two times by the Year.

Chap. 4. And that all Archbiſhops, and Biſhops ſhall pronounce the Sentence of Excommunication againſt all thoſe, that by Word, Deed, or Council, do contrary to the foreſaid Charters, or that in any Point, break or undo them. And that the ſaid Curſes be twice a Year denounced, and publiſhed by the Prelates aforeſaid. And if the ſame Prelates, or any of them, be remiſs in the Denunciation of the ſaid Sentences, the Archbiſhops of *Canterbury*, and *York* for the time being, ſhall compel and diſtrain them to the Execution of their Duties in Form aforeſaid.

Chap. 5. And for ſo much as divers People of our Realm, are in Fear that the Aids and Taſks, which they have given to us before Time, towards our Wars, and other Buſineſſes of their own Grant, or good Will, (however they were made) might turn to Bondage to them and their Heirs, becauſe they might be at another time found in the Rolls, and likewiſe for the Prizes taken throughout the Realm by our Miniſters:

We

We have granted for us, and our Heirs, that we ſhall not draw ſuch Aids, Taſks, nor Prizes into a Cuſtom, for any that hath been done heretofore, be it by Roll, or any other Precedent that may be founden.

Chap. 6. Moreover, we have granted for us and our Heirs, as well to Archbiſhops, Biſhops, Abbots, Priors, and other Folk of Holy Church as alſo to Earls, Barons, and to all the Commonalty of the Land, that for no Buſineſs from henceforth, we ſhall take ſuch Manner of Aids, Taſks or Prizes, but by the common Aſſent of the Realm, and for the common Profit thereof, ſaving the ancient Aids and Prizes due as accuſtomed.

Chap. 7. And for ſo much, as the more Part of the Commonalty of the Realm, find themſelves ſore grieved with the Maletot* of Wools, that is, to wit, a Toll of forty Shillings for every Sack of Wool, and have made Petition to us for to releaſe the ſame: we at their Requeſt, have clearly releaſed it; and have granted for us and our Heirs, that we ſhall not take ſuch Things, without their common Conſent and good Will; ſaving to us and our Heirs the Cuſtom of Wools, Skins and Leather, granted before by the Commonalty aforeſaid. In Witneſs of which Things, we have cauſed our Letters to be patent. Witneſs *Edward* our Son, at *London*, the tenth of *October*, and thirty-fifth Year of our Reign.

* Maletot ſignifies an Evil or unjuſt Toll, Cuſtom, or Impoſition of Money.

Sententia

Sententia lata Super Chartas.

The Sentence of the CLERGY, *againſt the Breakers of the Articles above-written.*

IN the Name of the Father, the Son and the Holy Ghoſt, *Amen.* Whereas our Sovereign Lord the King, to the Honour of God, and of Holy Church, and for the common Profit of the Realm, hath granted for him and his Heirs for ever, theſe Articles above-written; *Robert*, Archbiſhop of *Canterbury*, Primate of all *England*, admoniſhed all his Province, once, twice, and thrice: Becauſe that Shortneſs will not ſuffer ſo much Delay, as to give Knowledge to all the People of *England*, of theſe Preſents in Writing. We therefore enjoin all Perſons, of what Eſtate ſoever they be, that they, and every of them, as much as in them is, ſhall uphold and maintain theſe Articles granted by our Sovereign Lord the King, in all Points. And all thoſe that in any Point do reſiſt or break, or in any Manner hereafter procure, counſel, or any ways aſſent to reſiſt or break thoſe Ordinances, or go about it, by Word or Deed, openly or privily, by any Manner of Pretence or Colour: We the foreſaid Archbiſhop, by our Authority in this Writing expreſſed, do excommunicate and accurſe, and from the Body of our Lord

in

in *Jeſus Chriſt*, and from all the Company of Heaven, and from all the Sacraments of Holy Church, do ſequeſter and exclude.

There was another Charter or Statute made much about the ſame Time, called *de Tallagio non Concedendo*, which ſeems to be nearly the ſame as the above, excepting the fifth Chapter, by which Pardon is granted to all thoſe Nobles, and others, that refuſed to obey the King's illegal Commands.——The Curſe of the Church was alſo ordered to be pronounced twice a Year againſt the Breakers of this Charter.

An excellent Statute was alſo made the 25th of Edw. III. declaring what Offences* ſhall be ad-

* The Firſt by compaſſing, or imagining the Death of the King, Queen, Prince, and declaring the ſame by ſome overt Deed. By killing and murdering of the Chancellor, Treaſurer, Juſtices of the one Bench, or the other, Juſtices in Eyre, of Aſſize, of Oyer and Terminer, &c. *In their Places doing their Offices.*

The ſecond concerneth Violation, that is, to violate, or carnally to know the King's Conſort, or Queen; the King's eldeſt Daughter unmarried; the Prince's Wife.

The Third is levying War againſt the King.

The Fourth is adhering to the King's Enemies within the Realm, or without, and declaring the ſame by ſome overt Act.

The Fifth is counterfeiting of the Great Seal, the Privy Seal, the King's Coin.

The Sixth and laſt, by bringing into this Realm counterfeit Money to the Likeneſs of the King's Coine, &c.

And if the Offence be not within one of theſe ſeveral Claſſes or Heads, *it is no Treaſon.*

judged

judged Treaſon; for before the making of this Act, ſo many Things were charged as High-Treaſon by bloody-minded Miniſters, that no Man knew how to behave himſelf: Now by this Statute the Particulars of that grand Prime are reckoned up, and all others excluded till declared by Parliament; which was thought to be of ſuch Importance to the Public, that the Parliament wherein this Act paſſed, was long after called the bleſſed Parliament. It is therefore earneſtly recommended to the Reader's Peruſal, with my Lord *Coke*'s Notes upon it, in the third Part of his Inſtitutes, fol. 3.

There is another Law well worthy to be known by every *Engliſhman*, which is the Petition of Right, exhibited by the Lords ſpiritual and temporal, and Commons, in Parliament aſſembled, to King *Charles* the Firſt, concerning divers Rights and Liberties of the Subjects, which are there ſet forth in ſo plain and ſuccinct a Manner, to be the ancient Rights of the People, that his Majeſty was pleaſed to paſs and confirm them in full Parliament, in the third Year of his Reign.

The Petition of Right, paſſed in the Reign of CHARLES I, 1628.

THIS Petition humbly ſheweth unto our Sovereign Lord the King, the Lords ſpiritual and temporal, and Commons, in Parliament aſſembled, That, whereas it is declared and enacted, by a Statute made in the Time of the Reign of King *Edward* I. commonly called *Statutum de tallagio non concedendo*, that no Tallage or Aid ſhall be levied by the King, or his Heirs in this Realm, without the good Will and Aſſent of the Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other the Freemen of the Commonalty of this Realm: And, by Authority of Parliament holden in the five and twentieth Year of the Reign of King *Edward* III. it is declared and enacted, That, from thenceforth, no Perſon ſhould be compelled to make any Loans to the King againſt his Will, becauſe ſuch Loans were againſt Reaſon, and the Franchiſe of the Land: And, by other Laws of this Realm, it is provided, that none ſhould be charged by any Charge or Impoſition called a Benevolence, or by ſuch like Charge: By which the Statutes before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have inherited this Freedom, that they ſhould not be compelled to contribute to any Tax,

Tax, Tallage, Aid, or other like Charge, not ſet by common Conſent in Parliament.

II. Yet nevertheleſs, of late divers Commiſſions directed to ſundry Commiſſioners in ſeveral Counties, with Inſtructions, have iſſued; by Means whereof your People have been in divers Places aſſembled, and required to lend certain Sums of Money unto your Majeſty, and many of them, upon their Refuſal ſo to do, have had an Oath adminiſtered unto them not warrantable by the Laws or Statutes of this Realm, and have been conſtrained to become Bound to make Appearance and give Attendance before your Privy Council, and in other Places, and others of them, have been therefore impriſoned, confined, and ſundry other Ways moleſted and diſquieted: And divers other Charges have been laid and levied upon your People, in ſeveral Counties, by Lord-lieutenants, Deputy-lieutenants, Commiſſioners for Muſters, Juſtices of Peace, and others, by Command or Direction from your Majeſty, or your Privy Council, againſt the Laws and free Cuſtoms of this Realm.

III. And whereas alſo, by the Statute called *The great Charter of the Liberties of England*, it is declared and enacted, That no Freeman may be taken or impriſoned, or be diſſeized of his Freehold or Liberties, or his free Cuſtoms, or be outlawed or exiled, or in any Manner de-

deſtroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.

IV. And in the eight and twentieth Year of the Reign of King *Edward* III. it was declared and enacted, by Authority of Parliament, That no Man, of what Eſtate or Condition that he be, ſhould be put out of his Land or Tenements, nor taken, nor impriſoned, nor diſherited, nor put to death, without being brought to anſwer by due Proceſs of Law.

V. Nevertheleſs, againſt the Tenor of the ſaid Statutes, and other the good Laws and Statutes of your Realm to that End provided, divers of your Subjects have of late been impriſoned without any Cauſe ſhewed. And, when, for their Deliverance, they were brought before Juſtice, by your Majeſty's Writs of *Habeas Corpus*, there to undergo and receive as the Court ſhould order, and their Keepers commanded to certify the Cauſes of their Detainer, no Cauſe was certified, but that they were detained by your Majeſty's ſpecial command, ſignified by the Lords of your Privy Council, and yet were returned back to ſeveral Priſons, without being charged with any Thing to which they might make Anſwer according to Law.

VI. And whereas of late great Companies of Soldiers and Mariners have been diſperſed into divers Counties of the Realm, and the Inhabitants, againſt their Wills, have been compelled to

to receive them into their Houſes, and there to ſuffer them to ſojourn, againſt the Laws and Cuſtoms of this Realm, and to the great Grievance and Vexation of the People.

VII. And whereas alſo, by Authority of Parliament, in the five and twentieth Year of the Reign of King *Edward* III. it is declared and enacted, That no Man ſhould be fore-judged of Life or Limb againſt the Form of the *Great Charter* and Law of the Land: And, by the ſaid *Great Charter*, and other the Laws and Statutes of this your Realm, no Man ought to be judged to death but by the Laws eſtabliſhed in this your Realm, either by the Cuſtoms of the ſame Realm, or by Acts of Parliament: And whereas no Offender, of what Kind ſoever, is exempted from the Proceedings to be uſed, and Puniſhments to be inflicted by the Laws and Statutes of this your Realm: Nevertheleſs, of late divers Commiſſions, under your Majeſty's great Seal, have iſſued forth, by which certain Perſons have been aſſigned and appointed Commiſſioners, with Power and Authority to proceed within the Land, according to the Juſtice of Martial Law, againſt ſuch Soldiers and Mariners, or other diſſolute Perſons joining with them, as ſhould commit any Murther, Robbery, Felony, Mutiny, or other Outrage or Miſdemeanor whatſoever, and by ſuch ſummary Courſe and Order as is agreeable to Martial Law, and as is uſed in Armies in Time of War,

to

to proceed to the Trial and Condemnation of ſuch Offenders, and them to cauſe to be executed, and put to death according to the Law Martial.

VIII. By Pretext whereof ſome of your Majeſty's Subjects have been, by ſome of the ſaid Commiſſioners, put to Death, when and where, if, by the Laws and Statutes of the Land, they had deſerved Death, by the ſame Laws and Statutes alſo they might, and by no other ought, to have been judged and executed.

IX. And alſo ſundry grievous Offenders, by Colour thereof claiming an Exemption, have eſcaped the Puniſhments due to them by the Laws and Statutes of this your Realm, by Reaſon that divers of your Officers and Miniſters of Juſtice have unjuſtly refuſed or forborn to proceed againſt ſuch Offenders, according to the ſame Laws and Statutes, upon pretence that the ſaid Offenders were puniſhable only by Martial Law, and by Authority of ſuch Commiſſions, as aforeſaid: Which Commiſſions, and all other of like Nature, are wholly and directly contrary to the ſaid Laws and Statutes of this your Realm.

X. They do therefore humbly pray your moſt excellent Majeſty, That no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or ſuch like Charge, without common Conſent, by Act of Parliament: And that none be called to make Anſwer, or take ſuch

ſuch Oath, or to give Attendance, or be confined, or otherways moleſted or diſquieted concerning the ſame, or for Refuſal thereof: And that no Freeman, in any ſuch Manner as is before-mentioned, to be impriſoned or detained: And that your Majeſty would be pleaſed to remove the ſaid Soldiers and Mariners, and that your People may not be ſo burthened in Time to come: And that the aforeſaid Commiſſion, for proceeding by Martial Law, may be revoked and annulled: And that hereafter no Commiſſions of like Nature may iſſue forth, to any Perſon or Perſons whatſoever, to be executed as aforeſaid, leſt, by Colour of them, any of your Majeſty's Subjects be deſtroyed, or put to death, contrary to the Laws and Franchiſe of the Land.

XI. All which they moſt humbly pray of your moſt excellent Majeſty, as their Rights and Liberties, according to the Laws and Statutes of this Realm: And that your Majeſty would alſo vouchſafe to declare, That the Awards, Doings, and Proceedings to the Prejudice of your People, in any of the Premiſſes, ſhall not be drawn hereafter into Conſequence or Example: And that your Majeſty would be alſo graciouſly pleaſed, for the further Comfort and Safety of your People, to declare your royal Will and Pleaſure, That in the Things aforeſaid, all your Officers and Miniſters ſhall ſerve you according to the Laws and Statutes of this Realm, as they tender the Honour of your Majeſty, and the Proſperity of this Kingdom. *Stat.* 17 *Car. cap.* 14.

We

We ſhall now in courſe preſent the Reader, as a farther Guide to the Knowledge of his Rights and Privileges, and to confirm what has been already ſaid, with the *Habeas Corpus Act*, which was made to free the Subject from cauſeleſs, tedious, and arbitrary Impriſonments. The Subject, it is true, had a Right, before this Law was made, to a Writ of *Habeas Corpus*, by the common Law of the Land, confirmed and eſtabliſhed by *Magna Charta*, to procure his Liberty when unjuſtly detained: But then it was rendered almoſt uſeleſs, partly by time-ſerving and corrupt Judges, and partly by the wicked Practices of Sheriffs and Goalers: The firſt ſtraining the Prerogative ſo far beyond the Bounds of Law, as to pretend the having a Power, in many Caſes, to grant or deny the ſaid Writ at their Pleaſure, and ſometimes alledging, that they could not take Bail, becauſe the Party, tauly, was a Priſoner of State: The ſecond, (Oppreſſion being in all Times their Trade) by putting the unhappy Priſoner to the Charge of an *Alias* and *Pluries*, that is, a ſecond and third Writ before they would obey the firſt, there being no Penalty, unleſs the third was diſobeyed. Theſe, and many other Evaſions, were made uſe of by encroaching Power, to render the Law relating to Impriſonments ineffectual: Therefore to remedy, and put a Stop to ſuch intolerable Miſchiefs, this wholſome Statute was provided, which is ſo plain, that there is little Need of any farther Comment upon it: But as no Man is ſure that he may not, at one Time or other, have

have Occaſion to claim the Benefit of this Act, it is thought proper to ſubjoin ſome few Obſervations, in order to reduce the Subſtance of the whole within the Reach of the meaneſt Capacity.

Anno Triceſimo Primo CAROLI II. *Regis.*

An Act for the better ſecuring the LIBERTY of the SUBJECT, and for the Prevention of Impriſonments beyond the Seas; commonly called the

HABEAS CORPUS ACT.

WHEREAS great Delays have been uſed by Sheriffs, Goalers, and other Officers to whoſe Cuſtody any of the King's Subjects have been committed, for criminal, or ſuppoſed criminal Matters, in making Return of Writs of *Habeas Corpus* to them directed, by ſtanding out an *Alias* and *Pluries*, *Habeas Corpus*, and ſometimes more, and by other Shifts, to avoid their yielding Obedience to ſuch Writs, contrary to their Duty, and the known Laws of the Land, whereby many of the King's Subjects have been, and hereafter may be long detained in Priſon, in ſuch Caſes where by Law they are bailable, to their great Charges and Vexation.

II. For the Prevention whereof, and the more ſpeedy Relief of all Perſons impriſoned for any ſuch criminal, or ſuppoſed criminal Matters, Be it enacted by the King's moſt excellent Majeſty, by and with the Advice and Conſent of the Lords ſpiritual and temporal, and Commons in this preſent Parliament aſſembled, and by the Authority thereof, That whenſoever any Perſon or Perſons ſhall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Goaler, Miniſter or other Perſon whatſoever, for any Perſon in his or their Cuſtody; and the ſaid Writ ſhall be ſerved upon the ſaid Officer, or left at the Goal or Priſon with any of the Under-Officers, Under-Keepers, or Deputy of the ſaid Officers or Keepers, that the ſaid Officer or Officers, &c. ſhall within three Days after the Service thereof, as aforeſaid (unleſs the Commitment aforeſaid were for Treaſon or Felony, plainly and ſpecially expreſſed in the Warrant of Commitment) upon Payment or Tender of the Charges of bringing the ſaid Priſoner to be aſcertained by the Judge or Court that awarded the ſame, and endorſed upon the ſaid Writ, not exceeding Twelve-pence *per* Mile, and upon Security given by his own Bond to pay the Charges of carrying back the Priſoner, if he ſhall be remanded by the Court or Judge, to which he ſhall be brought, according to the true Intent of this preſent Act, and that he will not make any Eſcape by the Way, make Return of ſuch Writ, and bring, or cauſe to be brought the Body of the Party ſo committed or reſtrained, unto, or before

before the Lord Chancellor, or Lord Keeper of the Great Seal of *England*, for the Time being, or the Judges or Barons of the ſaid Court from whence the ſaid Writs ſhall iſſue, or unto and before ſuch other Perſon or Perſons before whom the ſaid Writ is made returnable, according to the Command thereof. And ſhall then likewiſe certify the true Caſes of his Detainer or Impriſonment, unleſs the Commitment of the ſaid Party be in any Place beyond the Diſtance of twenty Miles from the Place or Places where ſuch Court or Perſon is or ſhall be reſiding; and if beyond the Diſtance of twenty Miles, and not above one hundred Miles, then within the Space of ten Days; and if beyond the Diſtance of one hundred Miles, then within the Space of twenty Days after ſuch the Delivery aforeſaid and not longer.

III. And to the Intent that no Sheriff, Goaler or other Officer, may pretend Ignoranee of the Import of any ſuch Writ, Be it enacted by the Authority aforeſaid, That all ſuch Writs ſhall be marked in this Manner, *Per Statutam Triceſimo primo Caroli Secundi Regis*, and ſhall be ſigned by the Perſon that awards the ſame; and if any Perſon or Perſons ſhall be, or ſtand committed or detained as aforeſaid, for any Crime unleſs for Felony or Treaſon, plainly expreſſed in the Warrant of Commitment, in the Vacation-time, and out of Term, it ſhall and may be lawful to and for the Perſon or Perſons ſo committed or detained (other than Perſons convict, or in Exe-

cution (by legal Proceſs, or any one on his or their Behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his Majeſty's Juſtices, either of the one Bench or of the other, or the Barons of the Exchequer of the Degree of the Coif, and the ſaid Lord Chancellor, *&c.* or any of them, upon View of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwiſe upon Oath made, that ſuch Copy or Copies were denied to be given by ſuch Perſon or Perſons in whoſe Cuſtody the Priſoner or Priſoners is or are detained, are hereby authoriſed and required, upon Requeſt made in writing by ſuch Perſon or Perſons, or any on his, her, or their Behalf, atteſted and ſubſcribed by two Witneſſes who were preſent at the Delivery of the ſame, to award and grant an *Habeas Corpus* under the Seal of ſuch Court whereof he ſhall then be one of the Judges, to be directed to the Officer or Officers in whoſe Cuſtody the Party ſo committed or detained ſhall be, returnable *immediate* before the ſaid Lord Chancellor or Lord Keeper, or ſuch Juſtice, Baron, or any other Juſtice or Baron of the Degree of the Coif of any of the ſaid Courts; and upon Service thereof as aforeſaid, the Officer or Officers, his or their Under-officer or Under-officers, Under-keeper or Under-keepers, or Deputy in whoſe Cuſtody the Party is ſo committed or detained, ſhall within the Times reſpectively before limited, bring ſuch Priſoner or Priſoners before the ſaid Lord Chancellor,

Chancellor, *&c.* or one of them, Before whom the ſaid Writ is made returnable, and in caſe of his Abſence, before any other of them, with the Return of ſuch Writ, and the true Cauſes of the Commitment and Detainer; and thereupon within two Days after the Party ſhall be brought before them, the ſaid Lord Chancellor or Lord Keeper, or ſuch Juſtice or Baron before whom the Priſoner ſhall be brought as aforeſaid, ſhall diſcharge the ſaid Priſoner from his Impriſonment, taking his or their Recognizance, with one or more Surety or Sureties in any Sum, according to their Diſcretions, having Regard to the Quality of the Priſoner, and Nature of the Offence, for his or their Appearance in the Court of King's Bench the Term following, or at the next Aſſizes, Seſſions, or general Goal-delivery of and for ſuch County, City, or Place where the Commitment was, or where the Offence was committed, or in ſuch other Court where the ſaid Offence is properly cognizable, as the Caſe ſhall require, and then ſhall certify the ſaid Writ, with the Return thereof, and the ſaid Recognizance or Recognizances, into the ſaid Court where ſuch Appearance is to be made, unleſs it ſhall appear unto the ſaid Lord Chancellor, *&c.* that the Party ſo committed is detained upon a legal Proceſs, Order, or Warrant, out of ſome Court that hath Juriſdiction of criminal Matters, or by ſome Warrant ſigned and ſealed with the Hand and Seal of any of the ſaid Juſtices or Barons, or ſome Juſtice or Juſtices of the Peace

for ſuch Matters or Offences for the which by the Law the Priſoner is not bailable.

IV. Provided always, and be it enacted, That if any Perſon ſhall have wilfully neglected by the Space of two whole Terms after his Impriſonment, to pray a *Habeas Corpus* for his Enlargement, ſuch Perſon ſo wilfully neglecting, ſhall not have any *Habeas Corpus* to be granted in Vacation-time, in purſuance of this Act.

V. And be it further enacted by the Authority aforeſaid, that if any Officer or Officers, his or their Under-officer or Under-officers, Under-keeper or Under-keepers, or Deputy, ſhall neglect or refuſe to make the Returns aforeſaid, or to bring the Body or Bodies of the Priſoner or Priſoners according to the Command of the ſaid Writ, within the reſpective Times aforeſaid, or upon demand made by the Priſoner or Perſon in his Behalf, ſhall refuſe to deliver, or within the ſpace of ſix Hours after demand, ſhall not deliver to the Perſon ſo demanding, a true Copy of the Warrant or Warrants of Commitment and Detainer of ſuch Priſoner, which he and they are hereby required to deliver accordingly, all and every the Head Goalers and Keepers of ſuch Priſons, and ſuch other Perſon in whoſe Cuſtody the Priſoner ſhall be detained, ſhall for the firſt Offence forfeit to the Priſoner or Party grieved, the Sum of one hundred Pounds, and for the ſecond Offence, the Sum of two hundred Pounds, and ſhall and is hereby made incapable to hold or execute

execute his ſaid Office; the ſaid Penalties to be recovered by the Priſoner or Party grieved, his Executors or Adminiſtrators, againſt ſuch Offender, his Executors or Adminiſtrators, by any Action of Debt, Suit, Bill, Plaint, or Information, in any of the King's Courts at *Weſtminſter*, wherein no Eſſoign, Protection, Privilege, Injunction, Wager of Law, or Stay of Proſecution by *Non vult ulterius proſequi*, or otherwiſe, ſhall be admitted or allowed, or any more than one Imparlance; and any Recovery or Judgment at the Suit of any Party grieved, ſhall be a ſufficient Conviction for the firſt Offence; and any after Recovery or Judgment at the Suit of a Party grieved for any Offence, after the firſt Judgment, ſhall be a ſufficient Conviction to bring the Officers or Perſon within the ſaid Penalty for the ſecond Offence.

VI. And for the Prevention of unjuſt Vexation by reiterated Commitments for the ſame Offence, Be it enacted by the Authority aforeſaid, that no Perſon or Perſons which ſhall be delivered or ſet at large upon any *Habeas Corpus*, ſhall at any Time hereafter be again impriſoned or committed for the ſame Offence, by any Perſon or Perſons whatſoever, other than by the legal Order and Proceſs of ſuch Court wherein he or they ſhall be bound by Recognizance to appear, or other Court having Juriſdiction of the Cauſe; and if any other Perſon or Perſons ſhall knowingly, contrary to this Act, recommit or impriſon, or knowingly procure or cauſe to be recommitted or impriſoned

for the ſame Offence, or pretended Offence, any Perſon or Perſons delivered or ſet at large as aforeſaid, or be knowingly aiding or aſſiſting therein, then he or they ſhall forfeit to the Priſoner or Party grieved, the Sum of five hundred Pounds, any colourable Pretence or Variation in the Warrant or Warrants of Commitment notwithſtanding, to be recovered as aforeſaid.

VII. Provided always, and be it further enacted, That if any Perſon or Perſons ſhall be committed for high Treaſon or Felony, plainly and ſpecially expreſſed in the Warrant of Commitment, upon his Prayer or Petition in open Court the firſt Week of the Term, or firſt Day of the Seſſions of *Oyer* and *Terminer*, or general Goal-delivery, to be brought to his Trial, ſhall not be indicted ſome time in the next Term, Seſſions of *Oyer* and *Terminer*, or general Goal-delivery after ſuch Commitment, it ſhall and may be lawful to and for the Judges of the Court of King's Bench, and Juſtices of *Oyer* and *Terminer*, or general Goal-delivery, and they are hereby required upon Motion to them made in open Court the laſt Day of the Term, Seſſions or Goal-delivery, either by the Priſoner, or any one in his Behalf, to ſet at liberty the Priſoner upon Bail, unleſs it appear to the Judges and Juſtices upon Oath made, that the Witneſſes for the King could not be produced the ſame Term, Seſſions, or general Goal-delivery; And if any Perſon or Perſons committed as aforeſaid, upon his Prayer or Petition in open Court the firſt Week of the Term,

Term, or first Day of the Sessions of *Oyer* and *Terminer*, and general Goal-delivery, to be brought to his Trial, shall not be indicted and tried the second Term, Sessions of *Oyer* and *Terminer*, or general Goal-delivery after his Commitment, or upon his Trial shall be acquitted, he shall be discharged from his Imprisonment.

VIII. Provided always, That nothing in this Act shall extend to discharge out of Prison any Person charged in Debt, or other Action, or with Process in any civil Cause, but that after he shall be discharged of his Imprisonment for such his criminal Offence, he shall be kept in Custody according to the Law, for such other Suit.

IX. Provided always, and be it enacted by the Authority aforesaid, That if any Person or Persons Subjects of this Realm, shall be committed to any Prison, or in Custody of any Officer or Officers whatsoever, for any Criminal, or supposed criminal Matter, that the said Person shall not be removed from the said Prison and Custody, into the Custody of any other Officer or Officers, unless it be by *Habeas Corpus*, or some other legal Writ; or where the Prisoner is delivered to the Constable, or other inferior Officer, to carry such Prisoner to some common Goal; or where any Person is sent by Order of any Judge of Assize, or Justice of Peace, to any common Workhouse, or House of Correction; or where

the Priſoner is removed from one Priſon or Place to another within the ſame County, in order to his or her Trial or Diſcharge in due Courſe of Law; or in Caſe of ſudden Fire or Infection, or other Neceſſity; and if any Perſon or Perſons ſhall after ſuch Commitment aforeſaid, make out and ſign, or counterſign any Warrant or Warrants for ſuch removal aforeſaid contrary to this Act, as well he that makes or ſigns, or counterſigns ſuch Warrant or Warrants, as the Officer or Officers that obey or execute the ſame, ſhall ſuffer and incur the Pains and Forfeitures in this Act before mentioned, both for the firſt and ſecond Offence reſpectively, to be recovered in Manner aforeſaid by the Party grieved.

X. Provided alſo, and be it further enacted by the Authority aforeſaid, That it ſhall and may be lawful to and for any Priſoner and Priſoners as aforeſaid, to move and obtain his or their *Habeas Corpus* as well out of the high Court of Chancery, or Court of Exchequer, as out of the Courts of King's Bench, or Common Pleas, or either of them; and if the ſaid Lord Chancellor or Lord Keeper, or any Judge or Judges, Baron or Barons for the Time being, of the Degree of the Coif, of any of the Courts aforeſaid, in the Vacation Time, upon View of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer, or upon Oath made that ſuch Copy or Copies were denied as aforeſaid, ſhall deny any Writ of *Habeas Corpus* by this Act

Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the Prisoner or Party grieved, the Sum of five hundred Pounds, to be recovered in Manner aforesaid.

XI. And be it declared and enacted by the Authority aforesaid, That an *Habeas Corpus* according to the true Intent and Meaning of this Act, may be directed and run into any County Palatine, the Cinque Ports, or other privileged Places within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, and the Isles of *Jersey* or *Guernsey*; any Law or Usage to the contrary notwithstanding.

XII. And for preventing illegal Imprisonments in Prisons beyond the Seas, Be it further enacted by the authority aforesaid, that no Subject of this Realm that now is, or hereafter shall be an Inhabitant or Resident of this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, shall or may be sent Prisoner into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or into Parts, Garrisons, Islands or Places beyond the Seas, which are, or at any Time hereafter, shall be within or without the Dominions of his Majesty, his Heirs or Successors, and that every such Imprisonment is hereby enacted and adjudged to be illegal; and that if any of the said Subjects now is, or hereafter shall be so imprisoned, every such Person or Persons so imprisoned

ſhall and may for every ſuch Impriſonment, maintain by vertue of this Act, an Action or Actions of falſe Impriſonment, in any of his Majeſty's Courts of Record, againſt the Perſon or Perſons by whom he or ſhe ſhall be ſo committed, detained, impriſoned, ſent Priſoner, or tranſported contrary to the true meaning of this Act, and againſt all or any Perſon or Perſons that ſhall frame, contrive, write, ſeal, or counterſign any Warrant or Writing for ſuch Commitment, Detainer, Impriſonment, or Tranſportation, or ſhall be adviſing, aiding or aſſiſting in the ſame, or any of them; and the Plaintiff in every ſuch Action ſhall have Judgment to recover his treble Coſts, beſides Damages; which Damages ſo to be given, ſhall not be leſs than five hundred Pounds; In which Action, no Delay, Stay or Stop of Proceeding, by Rule, Order, or Command, nor no Injunction, Protection, or Privilege whatſoever, nor any more then one Imparlance ſhall be allowed, excepting ſuch Rule of the Court wherein the Action ſhall depend, made in open Court, as ſhall be thought in Juſtice neceſſary, for ſpecial Cauſe to be expreſſed in the ſaid Rule; and the Perſon or Perſons who ſhall knowingly frame, contrive, write, ſeal, or counterſign any Warrant for ſuch Commitment, Detainer, or Tranſportation, or ſhall ſo commit, detain, impriſon, or tranſport any Perſon or Perſons contrary to this Act, or be any Ways adviſing, aiding, or aſſiſting therein, being lawfully convicted thereof, ſhall be unabled from thence-

forth

forth to bear any Office of Truſt or Profit within the ſaid Realm of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, or any of the Iſlands, Territories or Dominions thereunto belonging, and ſhall incur and ſuſtain the Pains, Penalties and Forfeitures limited, ordained and provided in and by the Statute of Proviſion and *Præmunire*, made in the ſixteenth Year of King *Richard* the Second, and be incapable of any Pardon from the King, his Heirs or Succeſſors, of the ſaid Forfeitures, Loſſes, or Diſabilities, or any of them.

XIII. Provided always, That nothing in this Act extend to give Benefit to any Perſon who ſhall by Contract in Writing agree with any Merchant, or Owner of any Plantation, or other Perſon whatſoever, to be tranſported to any Parts beyond the Seas, and receive Earneſt upon ſuch Agreement, although that afterwards ſuch Perſon ſhall renounce ſuch Contract.

XIV. Provided always, and be it enacted, That if any Perſon or Perſons lawfully convicted of any Felony, ſhall in open Court pray to be tranſported, and the Court ſhall think fit to leave him or them in Priſon for that Purpoſe, ſuch Perſon or Perſon may be tranſported into any Parts beyond the Seas; this Act or any Thing therein contained to the contrary notwithſtanding.

XV. Pro-

XV. Provided alſo, and be it enacted, That nothing herein contained, ſhall be deemed, conſtrued, or taken to extend to the Impriſoment of any Perſon before the firſt Day of *June*, one thouſand ſix hundred ſeventy and nine, or to any Thing adviſed, procured, or otherwiſe done, relating to ſuch Impriſonment; any thing herein contained to the contrary notwithſtanding.

XVI. Provided alſo, That if any Perſon or Perſons at any Time reſidant in this Realm, ſhall have committed any capital Offence in *Scotland* or *Ireland*, or any of the Iſlands, or foreign Plantations of the King, his Heirs or Succeſſors, where he or ſhe ought to be tried for ſuch Offence, ſuch Perſon or Perſons may be ſent to ſuch Place, there to receive ſuch Trial in ſuch Manner as the ſame might have been uſed before the making of this Act; Any thing herein contained to the contrary notwithſtanding.

XVII. Provided always, and be it enacted, That no Perſon or Perſons ſhall be ſued, impleaded, moleſted, or troubled for any Offence againſt this Act, unleſs the Party offending be ſued or impleaded for the ſame within two Years at the moſt after ſuch Time wherein the Offence ſhall be committed, in caſe the Party grieved ſhall not be then in Priſon, and if he ſhall be in Priſon, then within the Space of two Years after the Deceaſe of the Perſon impriſoned, or his,

or

or her Delivery out of Priſon, which ſhall firſt happen.

XVIII. And to the Intent no Perſon may avoid his Trial at the Aſſizes, or general Goal-delivery, by procuring his Removal before the Aſſizes, at ſuch Time as he cannot be brought back to receive his Trial there, Be it enacted, That after the Aſſizes proclaimed for that County where the Priſoner is detained, no Perſon ſhall be removed from the common Goal upon any *Habeas Corpus* granted in purſuance of this Act, but upon any ſuch *Habeas Corpus*, ſhall be brought before the Judge of Aſſize in open Court, who is thereupon to do what to Juſtice ſhall appertain.

XIX. Provided nevertheleſs, That after the Aſſizes are ended, any Perſon or Perſons detained, may have his or her *Habeas Corpus* according to the Direction and Intention of this Act.

XX. And be it enacted, That if any Information, Suit, or Action ſhall be brought or exhibited againſt any Perſon or Perſons for any Offence committed or to be commited againſt the Form of this Law, it ſhall be lawful for ſuch Defendants to plead the general Iſſue, that they are not guilty, or that they owe nothing, and to give ſuch ſpecial Matter in evidence to the Jury that ſhall try the ſame, which Matter being pleaded, had been good and ſufficient Matter in Law

Law to have diſcharged the ſaid Defendant or Defendants againſt the ſaid Information, Suit, or Action, and the ſaid Matter ſhall be then as available to him or them, to all Intents and Purpoſes, as if he or they had ſufficiently pleaded, ſet forth or alledged the ſame Matter in Bar or Diſcharge of ſuch Information, Suit, or Action.

XXI. And becauſe many times Perſons charged with petty Treaſon or Felony, or as Acceſſaries thereunto, are committed upon Suſpicion only, whereupon they are bailable or not, according as the Circumſtances making out that Suſpicion are more or leſs weighty, which are beſt known to the Juſtices of Peace that committed the Perſons, and have the Examinations before them, or to other Juſtices of the Peace in the County, Be it therefore enacted, That where any Perſon ſhall appear to be committed by any Judge or Juſtice of the Peace, and charged as Acceſſary before the Fact, to any petty Treaſon or Felony, or upon Suſpicion thereof, or with Suſpicion of petty Treaſon or Felony, which petty Treaſon or Felony ſhall be plainly and ſpecially expreſſed in the Warrant of Commitment, that ſuch Perſon ſhall not be removed or bailed by Virtue of this Act, or in any other Manner than they might have been before the making of this Act.

OBSERVATIONS.

THIS Act principally regardeth, either, People committed for ſome criminal, or ſuppoſed criminal Matter that doth not amount to Treaſon or Felony; or ſuch who in their Warrant of Commitment are charged with thoſe Crimes. The firſt have a Right to their *Habeas Corpus* directly, and ſo have the ſecond if the particular Treaſon or Felony be not plainly, and ſpecially expreſſed in the *Mittimus*, that is, the particular Fact muſt be ſet forth, where and when it was done; but if the Treaſon or Felony be plainly and ſpecially expreſſed in the *Mittimus*, then the Priſoner cannot have his *Habeas Corpus*, till he has petitioned in open Court to be brought to his Trial, and then, if he is not tried within the Time limited by the Act, he ſhall be admitted to bail, and if not indicted within the ſame Time, diſcharged. But if a Priſoner willfully neglects applying for a *Habeas Corpus* two whole Terms, he may be refuſed it in Vacation-Time.

With what hath been already remarked, the ſix following Obſervations may be ſaid to contain the Subſtance, or what is moſt material to be known, of this excellent Law.

1. That

1. That all Goalers are obliged, under very ſevere Penalties, to deliver to the Priſoner, or any Friend of his, in ſix Hours after demanded by either, a true Copy of the *Mittimus*.

2. Whatever the Charge be, ſo that it is not Treaſon, or Felony expreſsly ſet forth, any Perſon in the Priſoner's Behalf, carrying ſuch true Copy of the Commitment to the Lord Chancellor, or to any one of the Judges, or making Oath that ſuch a Copy was demanded and denied, the ſaid Lord Chancellor or Judge, upon Requeſt being made in Writing, and the Matters therein contained atteſted by two Witneſſes, ſhall grant an *Habeas Corpus* or forfeit five hundred Pounds to the Priſoner.

3. The Sheriff or Goaler muſt carry up the Priſoner within the Time limited by the Act, or forfeit five hundred Pounds to the Priſoner, the ſaid Priſoner paying the travelling Charges, which may be ſettled by the Judge that grants the Writ, and are not to exceed Twelve-pence for each Mile; and if upon return of ſuch *Habeas Corpus*, it ſhall appear that the Charge is bailable as aforeſaid, the Judge ſhall diſcharge the Priſoner upon Bail; not exceſſive Bail; but ſuch as is agreeable to the Quality of the Perſon, the Nature of the Crime, and to Equity and good Conſcience.

4. If a Perſon once ſo bailed, ſhall again be impriſoned for the ſame Offence, thoſe that do it ſhall forfeit five hundred Pounds to the injured Priſoner.

5. This

5. This Act extends to all Places within *England*, and *Wales*, the Town of *Berwick* upon *Tweed*, *Jerſey* and *Guernſey*, neither can the *Tower*, *Windſor* Caſtle, or any other Place of Confinement be excepted; eſpecially as there is an Act of Parliament which unites the King's Caſtles to the Counties wherein they ſtand, to prevent the ill Uſes that might be made of them. (*Vide* 13 *Richard* 2.)

6. No Perſon ſhall be ſent a Priſoner out of *England*, or *Wales*, into *Scotland*, *Ireland*, or any Place beyond the Seas.

As to the Proviſo's, they are ſo very plain, that there is no manner of occaſion for any Comment upon them; therefore, having done with this wholſome and neceſſary Law,

We ſhall now paſs on to the Bill of Rights; A moſt excellent Proviſion made for us at the late happy Revolution. A Time when all our Rights, as well religious as civil, were in the utmoſt Danger, and our Conſtitution upon the very Brink of Ruin, juſt ready to be ſwallowed up in the all-devouring Gulf of arbitrary Power.

Then it was that *Britons* behaved like *Britons*, and ſhewed themſelves to be the worthy Succeſſors of great and noble ſpirited Progenitors, that would not ſuffer their Birth-rights to be taken from them.

Then it was, that with true Patriot Zeal, with which almoſt every Breaſt was fired, they repelled the Yoke, and rejected the Shackles that were prepared for them, letting their King, and his Mini-

Miniſters know, in the moſt reſpectful and dutiful Manner, that they would not ſuffer him, or them to diſpenſe with the known Laws of the Land, by which they were reſolved to be governed, and not by his Will or any other lawleſs Power whatſoever; and upon his continuing to exerciſe the moſt unconſtitutional Acts of Power, they called in the Prince of *Orange* to their Aſſiſtance, upon which his Majeſty thought proper to abdicate the Throne; which he did by leaving the Kingdom, and putting himſelf into the Power, and under the Direction of a foreign Prince, whoſe Intereſts and Connections were incompatible with the Welfare of this Nation.

This was the Fate of King *James* the Second, a Prince, notwithſtanding what has been ſaid, poſſeſſed of many excellent Qualities, and might have been as happy as any King that ever ſwayed the *Britiſh* Sceptre, had he not been carried away by the Torrent of evil Council, to diſpenſe with the Laws of his Country, and govern by his own abſolute Will.

This was the Rock on which he ſplit, and his Greatneſs, at once, became like the Shadow of Death, a mere nothing: for, upon his Departure, the Throne was declared to be vacant, and the Prince and Princeſs of *Orange* ſeated thereon; but not till they had entered into the moſt ſolemn Engagement to govern according to the known Laws of the Realm, and to confirm to the People all their religious and civil

Rights,

Rights, which they did by giving their Aſſent to this excellent Law; for on that Condition, and that only, their Highneſſes were put in Poſſeſſion of the Government of theſe Kingdoms.

Never could any Law be better contrived for the Security of both the King and the People; and it was at that Time thought to be the ſure and certain Standard and Safeguard of the Right of Succeſſion and of *Engliſh* Liberty to all Poſterity; and there is no Doubt of its being ſuch, until the Generality of the People are ſo waſted by Luxury, as to become an eaſy Prey to Venality and Corruption, and ſo beſotted as neither to ſee, feel, hear, or underſtand.

This Act paſſed the royal Aſſent on the 16th Day of *December*, *Anno Dom.* 1689, and is intituled,

Bill of Rights

An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown.

WHEREAS the Lords ſpiritual and temporal, and Commons aſſembled at *Weſtminſter*, lawfully, fully and freely repreſenting all the Eſtates of the People of this Realm, did upon the thirteenth Day of *February* in the Year of our Lord One thouſand ſix hundred eighty-eight, preſent unto their Majeſties, then called

called and known by the Names and Stile of *William* and *Mary*, Prince and Princeſs of *Orange*, being preſent in their proper Perſons, a certain Declaration in Writing, made by the ſaid Lords and Commons in the Words following; viz.

Whereas the late King *James* the Second, by the Aſſiſtance of divers evil Counſellors, Judges, and Miniſters employed by him, did endeavour to ſubvert and extirpate the Proteſtant Religion, and the Laws and Liberties of this Kingdom.

By aſſuming and exerciſing a Power of diſpenſing with, and ſuſpending of Laws, and the Execution of Laws, without Conſent of Parliament.

By commiting and proſecuting divers worthy Prelates, for humbly petitioning to be excuſed from concurring to the ſaid aſſumed Power.

By iſſuing, and cauſing to be executed a Commiſſion under the Great Seal, for erecting a Court called, *The Court of Commiſſioners for Eccleſiaſtical Cauſes.*

By levying Money for and to the Uſe of the Crown by Pretence of Prerogative, for other time, and in other manner than the ſame was granted by Parliament.

By raiſing and keeping a ſtanding Army within this Kingdom in Time of Peace, without Conſent of Parliament, and quartering Soldiers contrary to Law.

By cauſing ſeveral good Subjects, being Proteſtants, to be diſarmed at the ſame time, when Papiſts

Papiſts were both armed and employed, contrary to Law.

By violating the Freedom of Election of Members to ſerve in Parliament.

By Proſecutions in the Court of King's Bench, for Matters and Cauſes cognizable only in Parliament; and by divers other arbitrary and illegal Courſes.

And whereas of late Years partial, corrupt, and unqualified Perſons, have been returned and ſerved on Juries in Trials, and particularly divers Jurors in Trials for High Treaſon, which were not Freeholders.

And exceſſive Bail hath been required of Perſons committed in criminal Caſes, to elude the Benefit of the Laws made for the Liberty of the Subjects.

And exceſſive Fines have been impoſed.

And illegal and cruel Puniſhments inflicted.

And ſeveral Grants and Promiſes made of Fines and Forfeitures, before any Conviction or Judgment againſt the Perſons, upon whom the ſame were to be levied.

All which are utterly and directly contrary to the known Laws and Statutes, and Freedom of this Realm.

And whereas the ſaid late King *James* the Second having abdicated the Government, and the Throne being thereby vacant.

His Highneſs the Prince of *Orange*, (whom it hath pleaſed Almighty God to make the glorious Inſtrument of delivering this Kingdom from

from Popery and arbitrary Power) did (by the Advice of the Lords ſpiritual and temporal, and divers principal Perſons of the Commons) cauſe Letters to be written to the Lords ſpiritual and temporal, being Proteſtants; and other Letters to the ſeveral Counties, Cities, Univerſities, Boroughs, and Cinque Ports, for the chooſing of ſuch Perſons to repreſent them, as were of right to be ſent to Parliament, to meet and ſit at *Weſtminſter*, upon the two and twentieth Day of *January*, in this Year One thouſand ſix hundred eighty and eight, in order to ſuch an Eſtabliſhment, as that their Religion, Laws, and Liberties might not again be in Danger of being ſubverted: upon which Letters, Elections have been accordingly made;

And thereupon the ſaid Lords ſpiritual and temporal, and Commons, purſuant to their reſpective Letters and Elections, being now aſſembled in a full and free repreſentative of this Nation, taking into their moſt ſerious Conſideration the beſt Means for attaining the Ends aforeſaid; do in the firſt Place (as their Anceſtors in like caſe have uſually done) for the vindicating and aſſerting their ancient Rights and Liberties, declare;

That the pretended Power of ſuſpending of Laws, or the Execution of Laws by regal Authority, without Conſent of Parliament, is illegal.

That the pretended Power of diſpenſing with Laws, or the Execution of Laws by regal Authority,

thority, as it hath been aſſumed and exerciſed of late, is illegal.

That the Commiſſion for erecting the late Court of Commiſſioners for eccleſiaſtical Cauſes, and all other Commiſſions and Courts of like nature, are illegal and pernicious.

That levying Money for or to the Uſe of the Crown, by Pretence of Prerogative, without Grant of Parliament, for longer time, or in other manner, then the ſame is or ſhall be granted is illegal.

That it is the Right of the Subjects to petition the King, and all Commitments and Proſecutions for ſuch petitioning, are illegal.

That the raiſing or keeping a ſtanding Army within the Kingdom in time of Peace, unleſs it be with Conſent of Parliament, is againſt Law.

That the Subjects, which are Proteſtants may have Arms for their Defence, ſuitable to their Conditions, and as allowed by Law.

That Election of Members of Parliament ought to be free.

That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or queſtioned in any Court or Place out of Parliament.

That exceſſive Bail ought not to be required, nor exceſſive Fines impoſed, nor cruel and unuſual Puniſhments inflicted.

That Jurors ought to be duly impannelled, and returned, and Jurors which paſs upon Men

in Trials for high Treaſon ought to be Freeholders.

That all Grants and Promiſes of Fines and Forfeitures of particular Perſons before Conviction, are illegal and void.

And that for Redreſs of all Grievances, and for the amending, ſtrengthening, and preſerving of the Laws, Parliaments ought to be held frequently.

And they do claim, demand, and inſiſt upon all and ſingular the Premiſſes, as their undoubted Rights and Liberties; and that no Declarations, Judgments, Doings, or Proceedings, to the Prejudice of the People in any of the ſaid Premiſies, ought in any wiſe to be drawn hereafter into Conſequence or Example.

To which Demand of their Rights, they are particularly encouraged by the Declaration of his Highneſs the Prince of *Orange*, as being the only Means for obtaining a full Redreſs and Remedy therein.

Having therefore an entire Confidence, That his ſaid Highneſs the Prince of *Orange* will perfect the Deliverance ſo far advanced by him, and will ſtill preſerve them from the Violation of their Rights, which they have here aſſerted, and from all other Attempts upon their Religion, Rights, and Liberties:

The ſaid Lords ſpiritual and temporal, and Commons aſſembled at *Weſtminſter* do reſolve,

That

That *William* and *Mary*, Prince and Princeſs of *Orange* be, and be declared, King and Queen of *England*, *France*, and *Ireland*, and the Dominions thereunto belonging, to hold the Crown and royal Dignity of the ſaid Kingdoms and Dominions, to them the ſaid Prince and Princeſs, during their Lives, and the Life of the Survivor of them; and that the ſole and full Exerciſe of the regal Power be only in, and executed by the ſaid Prince of *Orange*, in the Names of the ſaid Prince and Princeſs during their joint Lives; and after their Deceaſes, the ſaid Crown and royal Dignity of the ſaid Kingdoms and Dominions to be to the Heirs of the Body of the ſaid Princeſs; and for Default of ſuch Iſſue, to the Princeſs *Anne* of *Denmark*, and the Heirs of her Body; and for Default of ſuch Iſſue to the Heirs of the Body of the ſaid Prince of *Orange*.

And the Lords ſpiritual and temporal, and Commons, do pray the ſaid Prince and Princeſs to accept the ſame accordingly.

And that the Oaths hereafter mentioned be taken by all Perſons of whom the Oaths of Allegiance and Supremacy might be required by Law, inſtead of them; and that the ſaid Oaths of Allegiance and Supremacy be abrogated.

I A. B. *do ſincerely promiſe and ſwear, That I will be faithful, and bear true Allegiance to their Majeſties, King* William *and Queen* Mary; So help me God.

I A. B. *do ſwear, That I do from my Heart abhor, deteſt and abjure, as impious and heretical this damnable Doctrine and Poſition, That Princes excommunicated or deprived by the Pope, or any Authority of the See of* Rome, *may be depoſed or murdered by their Subjects, or any other whatſoever.*

And I do declare, That no foreign Prince, Perſon, Prelate, State or Potentate, hath, or ought to have any Juriſdiction, Power, Superiority, Preeminence or Authority, Eccleſiaſtical or Spiritual, within this Realm;

So help me God.

Upon which their ſaid Majeſties did accept the Crown and Royal Dignity of the Kingdoms of *England*, *France*, and *Ireland*, and the Dominions thereunto belonging, according to the Reſolution and Deſire of the ſaid Lords and Commons, contained in the ſaid Declaration.

And thereupon their Majeſties were pleaſed, that the ſaid Lords ſpiritual and temporal, and Commons, being the two Houſes of Parliament, ſhould continue to ſit, and with their Majeſties Royal Concurrence, make effectual Proviſion for the Settlement of the Religion, Laws, and Liberties of this Kingdom, ſo that the ſame for the future might not be in Danger again of being ſubverted; to which the ſaid Lords ſpiritual and temporal, and Commons, did agree and proceed to act accordingly.

Now

Now in Purſuance of the Premiſes, the ſaid Lords ſpiritual and temporal, and Commons in Parliament aſſembled, for the ratifying, confirming, and eſtabliſhing the ſaid Declaration, and the Articles, Clauſes, Matters, and Things therein contained, by the Force of a Law made in due Form by Authority of Parliament, do pray that it may be declared and enacted, That all and ſingular the Rights and Liberties aſſerted and claimed in the ſaid Declaration, are the true, ancient, and indubitable Rights and Liberties of the People of this Kingdom, and ſo ſhall be eſteemed, allowed, adjudged, deemed, and taken to be; And that all and every the Particulars aforeſaid, ſhall be firmly and ſtrictly holden and obſerved, as they are expreſſed in the ſaid Declaration; and all Officers and Miniſters whatſoever, ſhall ſerve their Majeſties and their Succeſſors, according to the ſame, in all Times to come.

And the ſaid Lords ſpiritual and temporal, and Commons, ſeriouſly conſidering how it hath pleaſed Almighty God, in his marvellous Providence, and merciful Goodneſs to this Nation, to provide and preſerve their ſaid Majeſties royal Perſons moſt happily to reign over us upon the Throne of their Anceſtors, for which they render unto him from the Bottom of their Hearts their humbleſt Thanks and Praiſes, do truly, firmly, aſſuredly, and in the Sincerity of their Hearts think, and do hereby recognize, ac-

knowledge and declare, that King *James* the Second having abdicated the Government, and their Majeſties having accepted the Crown and royal Dignity, as aforeſaid, their ſaid Majeſties did become, were, are, and of right ought to be, by the Laws of this Realm, our Sovereign Liege Lord and Lady, King and Queen of *England*, and the Dominions thereunto belonging, in and to whoſe princely Perſons, the royal State, Crown and Dignity of the ſaid Realms, with all Honours, *&c.* and Authorities to the ſame belonging and appertaining, are moſt fully, rightfully and intirely incorporated, united and annexed.

And for preventing all Queſtions and Diviſions in this Realm, by Reaſon of any pretended Titles to the Crown, and for preſerving a Certainty in the Succeſſion thereof, in and upon which the Unity, Peace, Tranquility and Safety of this Nation doth, under God wholly conſiſt and depend, the ſaid Lords ſpiritual and temporal, and Commons, do beſeech their Majeſties, that it may be enacted, eſtabliſhed and declared, that the Crown and regal Government of the ſaid Kingdoms and Dominions, with all and ſingular the Premiſes thereunto belonging and appertaining, ſhall be and continue to their Majeſties, and the Survivor of them, during their Lives, and the Life of the Survivor of them; and that the entire, perfect, and full Exerciſe of the regal Power and Government, be only in,

in, and executed by his Majeſty, in the Names of both their Majeſties during their joint Lives; and after their Deceaſes, the ſaid Crown and Premiſſes, ſhall be and remain to the Heirs of the Body of her Majeſty; and for default of ſuch Iſſue, to her Royal Highneſs the Princeſs *Anne* of *Denmark*, and the Heirs of her Body; and for default of ſuch Iſſue, to the Heirs of the Body of his ſaid Majeſty: And thereunto the ſaid Lords ſpiritual and temporal, and Commons, do in the Name of all the People aforeſaid, moſt humbly and faithfully ſubmit themſelves, their Heirs and Poſterities for ever; and do faithfully promiſe, That they will ſtand to, maintain and defend their ſaid Majeſties; and alſo the Limitation and Succeſſion of the Crown herein ſpecified and contained, to the utmoſt of their Powers, with their Lives and Eſtates againſt all Perſons whatſoever, that ſhall attempt any thing to the contrary.

And whereas it hath been found by Experience, that it is inconſiſtent with the Safety and Welfare of this Proteſtant Kingdom, to be governed by a Popiſh Prince, or by any King or Queen marrying a Papiſt, the ſaid Lords ſpiritual and temporal, and Commons, do further pray that it may be enacted, That all and every Perſon and Perſons that is, are, or ſhall be reconciled to, or ſhall hold Communion with the See or Church of *Rome*, or ſhall profeſs the Popiſh Religion, or ſhall marry a Papiſt, ſhall be excluded, and be for ever uncapable to inherit, poſſeſs, or

enjoy the Crown and Government of this Realm, and *Ireland*, and the Dominions thereunto belonging, or any part of the ſame, or to have, uſe, or exerciſe any regal Power, Authority, or Juriſdiction within the ſame; and in all and every ſuch Caſe or Caſes, the People of theſe Realms ſhall be, and are hereby abſolved of their Allegiance; and the ſaid Crown and Government ſhall from time to time deſcend to, and be enjoyed by ſuch Perſon or Perſons, being Proteſtants, as ſhould have inherited and enjoyed the ſame, in caſe the ſaid Perſon or Perſons ſo reconciled, holding Communion, or profeſſing or marrying, as aforeſaid, were naturally dead.

And that every King and Queen of this Realm, who at any time hereafter ſhall come to and ſucceed in the Imperial Crown of this Kingdom, ſhall on the firſt Day of the Meeting of the firſt Parliament, next after his or her coming to the Crown, ſitting in his or her Throne, in the Houſe of Peers, in the Preſence of the Lords and Commons therein aſſembled, or at his or her Coronation, before ſuch Perſon or Perſons who ſhall adminiſter the Coronation Oath to him or her, at the time of his or her taking the ſaid Oath, (which ſhall firſt happen) make, ſubſcribe, and audibly repeat the Declaration mentioned in the Statute made in the thirtieth Year of the Reign of King *Charles* the Second, entitled, *An Act for the more effectual preſerving the King's Perſon and Government, by diſabling Papiſts from ſitting in either Houſe of Parliament.*

But

But if it ſhall happen, that ſuch King or Queen upon his or her Succeſſion to the Crown of this Realm, ſhall be under the Age of twelve Years, then every ſuch King or Queen ſhall make, ſubſcribe, and audibly repeat the ſaid Declaration at his or her Coronation, or the firſt Day of the Meeting of the firſt Parliament, as aforeſaid, which ſhall firſt happen after ſuch King or Queen ſhall have attained the ſaid Age of twelve Years.

All which, their Majeſties are contented and pleaſed, ſhall be declared, enacted, and eſtabliſhed by Authority of this preſent Parliament, and ſhall ſtand, remain, and be the Law of this Realm for ever; and the ſame are by their ſaid Majeſties, by and with the Advice and Conſent of the Lords ſpiritual and temporal, and Commons in Parliament aſſembled, and by the Authority of the ſame, declared, enacted, and eſtabliſhed accordingly.

And be it further declared and enacted by the Authority aforeſaid, That from and after this preſent Seſſion of Parliament, no Diſpenſation by *Non obſtante* of or to any Statute, or any Part thereof, ſhall be allowed, but that the ſame ſhall be held void and of no effect, except a Diſpenſation be allowed of in ſuch Statute; and except in ſuch Caſes as ſhall be ſpecially provided for by one or more Bill or Bills to be paſſed during this preſent Seſſion of Parliament.

Provided that no Charter, or Grant, or Pardon, granted before the three and twentieth Day of *October*, in the Year of our Lord One Thou-

ſand Six Hundred Eighty Nine, ſhall be any ways impeached or invalidated by this Act, but that the ſame ſhall be and remain of the ſame Force and Effect in Law, and no other than as if this Act had never been made.

We ſhall now conclude with *The Act of Settlement*, which is relative to the foregoing Law, as being a further Limitation of the Succeſſion to the Crown. That provides that no Perſon whatſoever, profeſſing the Roman Catholic Religion, ſhall aſcend the Throne of theſe Kingdoms; and this Law is not only a Confirmation of that, but alſo limits the Succeſſion of the Crown to the Proteſtants of the illuſtrious Houſe of *Hanover*, in which are ſome excellent Proviſions made for the better Security of the Rights and Liberties of the Subject, and cloſes with a Confirmation of all thoſe good and wholſome Laws which our brave Anceſtors procured for the Safety and Well-being of the People of this Land. And as this Law is the Compact between the Houſe of *Hanover* and the People of *Great Britain*, it ought to be moſt religiouſly obſerved and adhered to; and it is, I fear, much to be lamented, that the Reſtrictions laid upon that Family never to leave the Kingdom without Conſent of Parliament, has been taken off by a Repeal of that Clauſe in an Act paſſed in the Beginning of his late Majeſty's Reign. Oh! may no more Alterations be made in this Compact, and may the SUCCESSION IN HIS MAJESTY'S ROYAL

ROYAL HOUSE, AND THE RELIGION, LAWS, RIGHTS, AND LIBERTIES OF THE SUBJECT go Hand in Hand down to all Poſterity, until this Globe ſhall be reduced to its original Chaos, and Time ſhall be ſwallowed up in Eternity: and let all the People ſay *Amen*.

Anno 12 & 13 Gulielmi III. Regis.

An ACT for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject.

Commonly called *The Act of Settlement.*

WHEREAS in the firſt Year of the Reign of your Majeſty, and of our late moſt gracious Sovereign Lady Queen *Mary*, &c. an Act of Parliament was made, intitled, [*An Act for declaring the Rights and Liberties of the Subject, and for ſettling the Succeſſion of the Crown*] wherein it was (amongſt other things) enacted, eſtabliſhed, and declared, That the Crown and regal Government of the Kingdoms of *England*, *France*, and *Ireland*, &c. ſhould be and continue to your Majeſty and the ſaid late Queen, during the joint Lives of your Majeſty and the ſaid Queen, and to the Survivor: And that after the Deceaſe of your Majeſty and of the ſaid Queen, the ſaid Crown and regal Government ſhould be and remain to the Heirs of the Body of the ſaid late Queen: And for default of ſuch Iſſue, to her Royal Highneſs the Princeſs *Anne* of *Den-*

mark, and the Heirs of her Body: And for default of ſuch Iſſue, to the Heirs of the Body of your Majeſty. And it was thereby further enacted, That all and every Perſon and Perſons that then were, or afterwards ſhould be reconciled to, or ſhall hold Communion with the See or Church of *Rome*, or ſhould profeſs the Popiſh Religion, or marry a Papiſt, ſhould be excluded, and are by that Act made for ever uncapable to inherit, poſſeſs or enjoy the Crown and Government of this Realm and *Ireland*, and the Dominions thereunto belonging, or any part of the ſame, or to have, uſe or exerciſe any regal Power, Authority or Juriſdiction within the ſame: And in all and every ſuch Caſe and Caſes, the People of theſe Realms ſhall be and are thereby abſolved of their Allegiance: And that the ſaid Crown and Government ſhall from time to time deſcend to and be enjoyed by ſuch Perſon or Perſons, being Proteſtants, as ſhould have inherited and enjoyed the ſame in caſe the ſaid Perſon or Perſons, ſo reconciled, holding Communion, profeſſing, or marrying, as aforeſaid, were naturally dead. After the making of which Statute, and the Settlement therein contained, your Majeſty's good Subjects, who were reſtored to the full and free Poſſeſſion and Enjoyment of their Religion, Rights and Liberties, by the Providence of God giving Succeſs to your Majeſty's juſt Undertakings and unwearied Endeavours for that Purpoſe, had no greater temporal Felicity to hope or wiſh for, than to ſee a royal

Progeny

Progeny deſcending from your Majeſty, to whom (under God) they owe their Tranquility, and whoſe Anceſtors have for many Years been principal Aſſertors of the reformed Religion and the Liberties of *Europe*, and from our ſaid moſt gracious Sovereign Lady, whoſe Memory will always be precious to the Subjects of theſe Realms; and it having ſince pleaſed Almighty God to take away our ſaid Sovereign Lady, and alſo the moſt hopeful Prince *William* Duke of *Glouceſter*, (the only ſurviving Iſſue of her Royal Highneſs the Princeſs *Anne* of *Denmark*) to the unſpeakable Grief and Sorrow of your Majeſty and your ſaid good Subjects, who under ſuch Loſſes, being ſenſibly put in mind, that it ſtandeth wholly in the Pleaſure of Almighty God, to prolong the Lives of your Majeſty, and of her Royal Highneſs, and to grant to your Majeſty, or to her Royal Highneſs, ſuch Iſſue as may be inheritable to the Crown and regal Government aforeſaid, by the reſpective Limitations in the ſaid recited Act contained, do conſtantly implore the divine Mercy for thoſe Bleſſings; and your Majeſty's ſaid Subjects having daily Experience of your Royal Care and Concern for the preſent and future Welfare of theſe Kingdoms, and particularly recommending from your Throne a further proviſion to be made for the Succeſſion of the Crown in the Proteſtant Line, for the Happineſs of the Nation, and the Security of our Religion; and it being abſolutely neceſſary for the Safety, Peace and Quiet of this Realm, to obviate all Doubts

Doubts and Contentions in the ſame, by reaſon of any pretended Titles to the Crown, and to maintain a Certainty in the Succeſſion thereof, to which your Subjects may ſafely have recourſe for their Protection, in caſe the Limitations in the ſaid recited Act ſhould determine: Therefore for a further Proviſion of the Succeſſion of the Crown in the Proteſtant Line, We your Majeſty's moſt dutiful and loyal Subjects, the Lords ſpiritual and temporal, and Commons in this preſent Parliament aſſembled, do beſeech your Majeſty that it may be enacted and declared: And be it enacted and declared by the King's moſt excellent Majeſty, by and with the Advice and Conſent of the Lords ſpiritual and temporal and Commons, *&c.* and by the Authority of the ſame, that the moſt excellent Princeſs *Sophia*, Electreſs and Dutcheſs Dowager of *Hanover*, Daughter of the moſt excellent Princeſs *Elizabeth* late Queen of *Bohemia*, Daughter of our late Sovereign Lord King *James* the Firſt, of happy memory, be and is hereby declared to be the next in Succeſſion in the Proteſtant Line, to the Imperial Crown and Dignity of the ſaid Realms of *England*, *France*, and *Ireland*, with the Dominions and Territories thereunto belonging, after his Majeſty, and the Princeſs *Anne* of *Denmark*, and in default of Iſſue of the ſaid Princeſs *Anne*, and of his Majeſty reſpectively: And that from and after the Deceaſes of his ſaid Majeſty our now Sovereign Lord, and of her Royal Highneſs the Princeſs *Anne* of *Denmark*,

mark, and for default of Iſſue of the ſaid Princeſs *Anne* and of his Majeſty reſpectively, the Crown and regal Government of the ſaid Kingdoms of *England*, &c. with the Royal State and Dignity of the ſaid Realms, and all Honours, *&c.* and Authorities to the ſame belonging and appertaining, ſhall be, remain and continue to the ſaid moſt excellent Princeſs *Sophia*, and the Heirs of her Body, being Proteſtants: And thereunto the ſaid Lords ſpiritual and temporal and Commons, ſhall and will, in the Name of all the People of this Realm, moſt humbly and faithfully ſubmit themſelves, their Heirs and Poſterities; and do faithfully promiſe, that after the Deceaſes of his Majeſty, and her Royal Highneſs, and the Failure of the Heirs of their reſpective Bodies, to ſtand to, maintain and defend the ſaid Princeſs *Sophia*, and the Heirs of her Body, being Proteſtants, according to the Limitation and Succeſſion of the Crown in this Act ſpecified and contained, to the utmoſt of their Powers, with their Lives and Eſtates, againſt all Perſons whatſoever that ſhall attempt any thing to the contrary.

Provided always, and it is hereby enacted, that all and every Perſon and Perſons, who ſhall or may take or inherit the ſaid Crown, by virtue of the Limitation of this preſent Act, and is, are, or ſhall be reconciled to, or ſhall hold Communion with the See or Church of *Rome*, or ſhall profeſs the Popiſh Religion, or ſhall marry a Papiſt, ſhall be Subject to ſuch Incapacities,

cities, as in ſuch Caſe or Caſes are by the ſaid recited Act provided, Enacted and Eſtabliſhed: And that every King and Queen of this Realm, who ſhall come to and ſucceed in the Imperial Crown of this Kingdom, by Virtue of this Act, ſhall have the Coronation Oath adminiſtred to him, her or them, at their reſpective Coronations, according to the Act of Parliament made in the firſt Year of the Reign of his Majeſty, and the ſaid late Queen *Mary*, intitled, *An Act for eſtabliſhing the Coronation Oath*, and ſhall make, ſubſcribe and repeat the Declaration in the Act firſt above recited, mentioned or referred to, in the manner and form thereby preſcribed.

And whereas it is requiſite and neceſſary that ſome further Proviſion be made for ſecuring our Religion, Laws and Liberties, from and after the Death of his Majeſty and the Princeſs *Anne* of *Denmark*, and in default of Iſſue of the Body of the ſaid Princeſs, and of his Majeſty reſpectively; be it enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the Lords ſpiritual and temporal, and Commons in Parliament aſſembled, and by the Authority of the ſame,

" THAT whoſoever ſhall hereafter come to " the Poſſeſſion of this Crown, ſhall join " in Communion with the Church of *England*, " as by Law Eſtabliſhed.

" That in Caſe the Crown and Imperial " Dignity of this Realm ſhall hereafter come " to any Perſon, not being a Native of this " Kingdom of *England*, this Nation be not " obliged

" obliged to engage in any War for the Defence
" of any Dominions or Territories which do not
" belong to the Crown of *England*, without the
" conſent of Parliament.

" That no Perſon who ſhall hereafter come to
" the Poſſeſſion of this Crown, ſhall go out of
" the Dominions of *England*, *Scotland*, or *Ireland*,
" without conſent of Parliament.

" That from and after the time that the fur-
" ther Limitation by this Act ſhall take effect,
" all matters and things relating to the well Go-
" verning of this Kingdom, which are properly
" cognizable in the Privy Council by the Laws
" and Cuſtoms of this Realm, ſhall be tranſacted
" there, and all Reſolutions taken thereupon
" ſhall be ſigned by ſuch of the Privy Council as
" ſhall adviſe and conſent to the ſame.

" That after the ſaid Limitation ſhall take ef-
" fect, as aforeſaid, no Perſon born out of the
" Kingdoms of *England*, *Scotland*, or *Ireland*, or
" the Dominions thereunto belonging (although
" he be Naturalized or made a Denizen, (except
" ſuch as are born of *Engliſh* Parents) ſhall be
" capable to be of the Privy Council, or a Mem-
" ber of either Houſe of Parliament, or to enjoy
" any Office or Place of Truſt, either Civil or Mi-
" litary, or to have any grant of Lands, Tene-
" ments or Hereditaments from the Crown to
" himſelf, or to any other, or others in Truſt
" for him.

" That no Perſon who has an Office or Place
" of Profit under the King, or receives a Pen-

" ſion

" ſion from the Crown, ſhall be capable of " ſerving as a Member of the Houſe of Com- " mons.

" That after the ſaid Limitation ſhall take ef- " fect, as aforeſaid, Judges Commiſſions be " made *Quam diu ſe bene Geſſerint*, and their Sa- " laries aſcertained and eſtabliſhed: but upon " the Addreſs of both Houſes of Parliament, it " may be lawful to remove them.

" That no Pardon under the great Seal of *Eng-* " *land*, be pleadable to an Impeachment by the " Commons in Parliament."

And whereas the Laws of *England* are the Birthright of the People thereof, and all the Kings and Queens who ſhall aſcend the Throne of this Realm, ought to adminiſter the Government of the ſame according to the ſaid Laws, and all their Officers and Miniſters ought to ſerve them reſpectively according to the ſame: The ſaid Lords ſpiritual and temporal, and Commons do therefore further humbly pray, that all the Laws and Statutes of this Realm for ſecuring the eſtabliſhed Religion, and the Rights and Liberties of the People thereof, and all other Laws and Statutes of the ſame, now in force, may be ratified and confirmed; and the ſame are by his Majeſty, by and with the advice and conſent of the ſaid Lords ſpiritual and temporal, and Commons, and by Authority of the ſame, Ratified and Confirmed accordingly.

The

The Security of Engliſhmens Lives, or the Truſt, Power, and Duty of the GRAND JURIES *of* ENGLAND, *explained according to the Fundamentals of the Engliſh* GOVERNMENT, *and the Declarations of the ſame made in Parliament by many* STATUTES. By John Somers, Baron

First Printed in the Year MDCLXXXI.

THE principal Ends of all Civil Government, and of human Society, were the Security of Mens Lives, Liberties and Properties, mutual Aſſiſtance and Help each unto other, and Proviſion for their common Benefit and Advantage; and where the Fundamental Laws and Conſtitution of any Government have been wiſely adapted unto thoſe Ends, ſuch Countries and Kingdoms have increaſed in Virtue, Proweſs, Wealth and Happineſs, whilſt others, through the Want of ſuch excellent Conſtitutions, or Neglect of preſerving them, have been a Prey to the Pride, Luſt and Cruelty of the moſt Potent, and the People have had no Aſſurance of Eſtates, Liberties or Lives, but from their Grace and Pleaſure: They have been many Times forced to welter in each others Blood, in their Maſters Quarrel for Dominion, and at beſt they

they have ſerved like Beaſts of Burden, and by continual, baſe ſubſerviency to their Maſters Vices, have loſt all ſenſe of true Religion, Virtue and Manhood.

Our Anceſtors have been famous in their Generations for Wiſdom, Piety, and Courage, in forming and preſerving a Body of Laws to ſecure themſelves and their Poſterities from Slavery and Oppreſſion, and to maintain their Native Freedoms; to be ſubject only to the Laws made by their own Conſent in their general Aſſemblies, and to be put in Execution chiefly by themſelves, their Officers and Aſſiſtants; to be guarded and defended from all Violence and Force, by their own Arms, kept in their own Hands, and uſed at their own Charge under their Princes Conduct; entruſting nevertheleſs an ample Power to their Kings, and other Magiſtrates, that they may do all the Good, and enjoy all the Happineſs, that the largeſt Soul of Man can honeſtly wiſh; and carefully providing ſuch means of correcting and puniſhing their Miniſters and Counſellors, if they tranſgreſſed the Laws, that they might not dare to abuſe or oppreſs the People, or deſign againſt their Freedom or Welfare.

This Body of Laws our Anceſtors always eſteemed the beſt Inheritance they could leave to their Poſterities, well knowing that theſe were the ſacred Fence of their Lives, Liberties, and Eſtates, and an unqueſtionable Title whereby they might call what they had their own, or ſay they were their own Men: The ineſtimable value of this

this Inheritance moved our Progenitors with great Reſolution bravely from Age to Age to defend it; and it now falls to our Lot to preſerve it againſt the dark Contrivances of a Popiſh Faction, who would by Frauds, Sham-Plots, and infamous Perjuries, deprive us of our Birth-rights, and turn the Points of our Swords (our Laws) into our own Bowels; they have impudently ſcandalized our Parliaments, with Deſigns to over-turn the Monarchy, becauſe they would have excluded a Popiſh Succeſſor, and provided for the Security of the Religion and Lives of all Proteſtants: They have cauſed Lords and Commoners to be for a long Time kept in Priſons, and ſuborned Witneſſes to ſwear Matters of Treaſon againſt them; endeavouring thereby, not only to cut off ſome who had eminently appeared in Parliament for our antient Laws, but through them to blaſt the Repute of Parliaments themſelves, and to leſſen the Peoples Confidence in thoſe great Bulwarks of their Religion and Government.

The preſent Purpoſe is to ſhew how well our worthy Forefathers have provided in our Law for the Safety of our Lives, not only againſt all Attempts of open Violence, by the ſevere Puniſhment of Robbers, Murderers, and the like, but the ſecret poiſonous Arrows that fly in the Dark, to deſtroy the innocent by falſe Accuſation and Perjuries. Our Law-makers foreſaw both their Dangers from the Malice and Paſſion, that might cauſe ſome of private Condition, to accuſe others falſly in the Courts of Juſtice, and the great Hazards of worthy and eminent Mens Lives,

Lives, from the Malice, Emulation, and ill Deſigns of corrupt Miniſters of State, or otherwiſe potent, who might commit the moſt odious of Murders in the Form and Courſe of Juſtice; either by corrupting of Judges, as dependent upon them for their Honour and great Revenue, or by bribing and hiring Men of depraved Principles, and deſperate Fortunes, to ſwear falſly againſt them; doubtleſs they had heard the Scriptures, and obſerved that the great men of the *Jews* ſought out many to ſwear Treaſon and Blaſphemy againſt Jeſus Chriſt: They had heard of *Ahab*'s Courtiers and Judges, who in the Courſe and Form of Juſtice, by falſe Witneſſes, murdered *Naboth, becauſe he would not ſubmit his Property to an Arbitrary Power.* Neither were they ignorant of the antient *Roman* Hiſtories, and the peſtilent falſe Accuſers that abounded in the Reign of ſome of thoſe Emperors, under whom the greateſt of Crimes was to be Virtuous: Therefore, as became good Legiſlators, they made as prudent Proviſion as perhaps any Country in the World enjoys, for equal and impartial Adminiſtration of Juſtiee in all the Concerns of the Peoples Lives; that every Man, whether Lord or Commoner, might be in ſafety, whilſt they lived in due Obedience to the Laws.

For this Purpoſe it is made a Fundamental in our Government, that unleſs it be by Parliament, no Man's Life ſhall be touched for any Crime whatſoever, ſave by the Judgment of at leaſt twenty four Men *; that is, twelve or more, to

* See Lord *Coke's Inſtit.* 3d. part, p. 40.

find

find the Bill of Indictment, whether he be Peer of the Realm, or Commoner, and twelve Peers, or above, if a Lord, if not twelve Commoners to give the Judgment upon the general Iſſue of Not guilty joined *; of theſe twenty four the firſt twelve are called the Grand Inqueſt, or the Grand Jury, for the Extent of their Power, and in regard that their Number muſt be more than twelve, ſometimes twenty three, or twenty five, never were leſs than thirteen, Twelve whereof at leaſt muſt agree to every Indictment, or elſe it is no legal Verdict; if eleven of twenty one, or of thirteen, ſhould agree to find a Bill of Indictment, it were no Verdict. The other Twelve, in Commoners Caſes, are called the Petit-Jury, and their Number is ever Twelve; but the Jury for a Peer of the Realm may be more in number, though of like Authority. The Office and Power of theſe Juries is *Judicial*, they only are the Judges from whoſe Sentence the Indicted are to expect Life or Death; upon their Integrity and Underſtanding, the Lives of all that are brought into Judgment do ultimately depend; from their Verdict their lies no Appeal, by finding Guilty or Not Guilty; they do complicately reſolve both Law and Fact.

As it hath been the Law, ſo it hath always been the Cuſtom, and Practice of theſe Juries, upon all general Iſſues, pleaded in Caſes Civil as well as Criminal, to judge both of the Law and Fact. So it is ſaid in the Report of the Lord Chief Juſtice

* See *Mag. Chart. Coke's* 2d part of *Inſtit.* p. 50. 51.

Vaughan,

Vaughan *, in *Buſhel*'s Caſe, that theſe Juries determine the Law in all Matters where Iſſue is joined and tried, in the principal Caſe, whether the Iſſue be about a Treſpaſs or a Debt, or Diſſeizin in Aſſizes, or a Tort, or any ſuch like, unleſs they ſhould pleaſe to give a ſpecial Verdict with an implicit Faith in the Judgment of the Court, to which none can oblige them againſt their Wills.

Theſe laſt Twelve muſt be Men of equal Condition with the party Indicted, and are called his Peers: therefore if it be a Peer of the Realm, they muſt be all ſuch, when Indicted at the Suit of the King; and in the Caſe of Commoners, every Man of the Twelve muſt agree to the Verdict freely, without Compulſion, Fear, or Menace, elſe it is no Verdict. Whether the Caſe of a Peer be harder, I will not determine. Our Anceſtors were careful that all Men of the like Condition and Quality, preſumed to be ſenſible of each others Infirmity, ſhould mutually be Judges each of others Lives, and alternately taſte of Subjection and Rule; every Man being equally liable to be Accuſed, or Indicted, and perhaps to be ſuddenly judged by the Party, of whom he is at preſent Judge, if he be found innocent. Whether it be Lord or Commoner that is Indicted, the Law intends (as near as may be) that his Equals that judge him, ſhould be his Companions, known to him, and he to them, or at

* See the Reports of the Lord Chief Juſtice *Vaughan*, p. 150, 151.

leaſt

leaſt his Neighbours or Dwellers near about the Place where the Crime is ſuppoſed to have been committed, to whom ſomething of the Fact muſt probably be known; and though the Lords are not appointed to be of the Neighbourhood to the indicted Lord, yet the Law ſuppoſes them to be Companions, and perſonally well known each unto other, being preſumed to be a ſmall number (as they have antiently been) and to have met yearly, or oftner in Parliament, as by Law they ought, beſides their other Meetings, as the hereditary Counſellors of the Kings of *England*. If time hath altered the Caſe of the Lords, as to the Number, Indifferency and Impartiality of the Peers, it hath been, and may be worthy of the Parliament's Conſideration, and the greater Duty is incumbent upon Grand Juries, to examine with the utmoſt Diligence the Evidence againſt Peers, before they find a Bill of Indictment againſt any of them, if in Truth it may put their Lives in greater danger.

It is not deſigned at this time to undertake a Diſcourſe of Petit-Juries, but to conſider the Nature and Power of Grand Inqueſts, and to ſhew how much the Reputation, the Fortunes, and the Lives of *Engliſhmen*, depend upon the conſcientious Performance of their Duty.

It was abſolutely neceſſary for the Support of the Government, and the Safety of every Man's Life and Intereſt, that ſome ſhould be truſted to inquire after all ſuch as by Treaſons, Felonies, or leſſer Crimes, diſturbed the Peace, that they

might be proſecuted, and brought to condign Puniſhment; and it was no leſs needful for every Man's quiet and ſafety, that the Truſt of ſuch Inquiſitions ſhould be put into the Hands of Perſons of Underſtanding and Integrity, indifferent, and impartial, that might ſuffer no Man to be falſly accuſed, or defamed, nor the Lives of any to be put in Jeopardy, by the malicious Conſpiracies of great or ſmall, or the Perjuries of any profligate Wretches: For theſe neceſſary, honeſt Ends was the Inſtitution of Grand Juries.

Our Anceſtors thought it not beſt to truſt this great Concern of their Lives and Intereſts in the Hands of any Officer of the King's, or in any Judges named by him, nor in any certain number of Men during Life, leſt they ſhould be awed or influenced by great Men, corrupted by Bribes, Flatteries, or love of Power, or become negligent, or partial to Friends and Relations, or purſue their own Quarrels or private Revenges, or connive at the Conſpiracies of others, and indict thereupon. But this Truſt of inquiring out, and indicting all the Criminals in a County, is placed in Men of the ſame County, more at leaſt than Twelve of the moſt honeſt, and moſt ſufficient for Knowledge, and Ability of Mind and Eſtate, to be from Time to Time at the Seſſions and Aſſizes, and all other Commiſſions of Oyer and Terminer, named and returned by the chief ſworn Officer of the County, the Sheriff, (who was alſo by expreſs Law antiently choſen annually by the People of every County) and truſted with the

the Execution of all Writs and Proceſſes of the Law, and with the Power of the County to ſuppreſs all Violences, unlawful Routs, Riots, and Rebellions. Yet our Laws left not the Election of theſe Grand Inqueſts abſolutely to the Will of the Sheriffs, but have deſcribed in general their Qualifications, who ſhall inquire and indict either Lord or Commoner: They ought, by the old common Law, to be lawful liege People, of ripe Age; not over-aged or infirm, and of good Fame amongſt their Neighbours, free from all reaſonable Suſpicion of any Deſign for himſelf or others, upon the Eſtates or Lives of any ſuſpected Criminals, or Quarrel, or Controverſy with any of them: They ought to be indifferent and impartial, even before they are admitted to be ſworn, and of ſufficient Underſtanding and Eſtate for ſo great a Truſt. The antient Law-Book, called *Briton* *, of great Authority, ſays, The Sheriffs, Bailiffs, ought to be ſworn to return ſuch as know beſt how to inquire, and diſcover all Breaches of the Peace; and leaſt any ſhould intrude themſelves, or be obtruded by others, they ought to be returned by the Sheriff, without the Denomination of any, except the Sheriffs Officers. And agreeable hereunto was the Statute of eleven *Henry* IV. in theſe Words †. "*Item*, "Becauſe of late Inqueſts were taken at *Weſt-*"*minſter* of Perſons named to the Juſtices, without "due Return of the Sheriff, of which Perſons

* See *Briton*, p. 9, and 10.
† See eleven *Henry* IV.

" ſome were outlawed, *&c.* and ſome fled to " Sanctuary for Treaſon and Felony, *&c.* by " whom, as well many Offenders were indicted, " as other lawful liege People of the King not " guilty, by Conſpiracy, Abatement, and falſe " Imagination of others, *&c.* againſt the Courſe " of the common Law, *&c.* It is therefore " granted for the Eaſe and Quietneſs of the " People, that the ſame Indictment, with all " its Dependences, be void, and holden for none " for ever; and that from henceforth, no In- " dictment be made by any ſuch Perſons, but " by Inqueſt of the King's liege People, in the " manner as was uſed, *&c.* returned by the " Sheriffs, *&c.* without any denomination to the " Sheriffs, *&c.* according to the Law of *England*, " and if any Indictment be made hereafter, in " any Point to the Contrary, the ſame be alſo " void, and holden for none for ever." See alſo the Statute of *Weſtm.* 2d cap. 38. and *Articul. ſuper Cortas* *, ch. 9.

So careful have our Parliaments been that the Power of Grand Inqueſts might be placed in the Hands of good and worthy Men; that if one Man of a Grand Inqueſt, though they be Twenty Three or more, ſhould not be *Liber & Legalis Homo*, or ſuch as the Law requires, and duly returned without denomination to the Sheriff; all the Indictments found by ſuch a Grand Jury, and the Proceedings upon them, are void and null. So it was adjudged in *Scarlet*'s caſe.

* See *Coke's Inſtit.* 3d Part, fol. 33.

I know

I know too well, that the Wiſdom and Care of our Anceſtors, in this Inſtitution of Grand Juries, hath not been of late conſidered as it ought; nor the Laws concerning them duly obſerved; nor have the Gentlemen and other Men of Eſtates, in the ſeveral Counties, diſcerned how inſenſibly their legal Power and Juriſdiction in their Grand and Petit Juries is decayed, and much of the Means to preſerve their own Lives and Intereſts, taken out of their Hands. It is a wonder that they were not more awakened with the Attempt of the late Lord Chief Juſtice *Keyling*, who would have uſurped a Lordly, dictatorian Power over the Grand Jury of *Somerſetſhire*, and commanded them to find a Bill of Indictment for Murder, for which they ſaw no Evidence, and upon their Refuſal, he not only threatened the Jury, but aſſumed to himſelf an Arbitrary Power to fine them.

Here was a bold Battery made upon the antient Fence of our Reputations, and Lives: If that Juſtice's Will had paſſed for Law, all the Gentlemen of the Grand Juries muſt have been the baſeſt Vaſſals to the Judges, and have been penally obliged, *Jurare in Verba Magiſtri*, to have ſworn to the Directions or Dictates of the Judges: But thanks be to GOD, the late long Parliament (though filled with Penſioners) could not bear ſuch a bold Invaſion of the *Engliſh* Liberty; but upon the Complaint of one Sir *Hugh Windham*, Foreman of the ſaid Jury, and a Member of that Parliament, the Commons brought the then

Chief Juſtice to their Bar, to acknowledge his Fault, whereupon the Proſecution ceaſed.

The Truſt and Power of Grand Juries, is, and ought to be, accounted amongſt the greateſt and of moſt Concern, next to the Legiſlative. The Juſtice of the whole Kingdom, in criminal Caſes, almoſt wholly depending upon their Ability and Integrity, in the due Execution of their Office: Beſides, the Concernments of all Commoners, the Honour, Reputation, Eſtates, and Lives of all the Nobility of *England*, are ſo far ſubmitted to their Cenſure, that they may bring them into queſtion for Treaſon, or Felony, at their Diſcretion: Their Verdict muſt be entered upon Record, againſt the greateſt Lords, and Proceſs muſt legally go out againſt them thereupon, to impriſon them if they can be taken, or to outlaw them, as the Statutes direct; and if any Peer of the Realm, though innocent, ſhould juſtly fear a Conſpiracy againſt his Life, and think fit to withdraw, the Direction of the Statutes, in proceeding to the Outlawry, being rightly purſued, he could never reverſe the Outlawry, as the Law now ſtands, ſave by Pardon, or Act of Parliament. Hence it appears, that in caſe a Grand Jury ſhould be drawn to Indict a Noble Peer unjuſtly, either by means of their own Weakneſs, or Partiality, or a blind Submiſſion to the Direction or Opinion of Judges: One ſuch Failure of a Jury, may occaſion the Ruin of many of the beſt or greateſt Families in *England*: I mention this Extent of the Grand Juries Power over all the Nobility, only

only to ſhew their joint Intereſt and Concern with the Commons of *England* in this antient Inſtitution.

The Grand Juries are truſted to be the principal means of preſerving the Peace of the whole Kingdom, by the terror of Executing the Penal Laws againſt Offenders, by their Wiſdom, Diligence, and Faithfulneſs in making due Inquiries after all Breaches of the Peace, and bringing every one to anſwer for his Crime, at the Peril of his Life, Limb, and Eſtate; that every Man, who lives within the Law, may ſleep ſecurely in his own Hoſe.

It is committed to their Charge and Truſt, to take care of bringing capital Offenders to pay their Lives to Juſtice, and leſſer Criminals to other Puniſhments, according to their ſeveral Demerits. The Courts, or Judges, or Commiſſioners of Oyer and Terminer, and of Goal Delivery, are to receive only from the Grand Inqueſt, all capital Matters whatſoever, to be put in Iſſue, tried and judged before them by the Petit Juries. The whole Stream of Juſtice, in ſuch caſes, either runs freely, or is ſtopped and diſturbed, as the Grand Inqueſts do their Duties, either faithfully and prudently, or neglect or omit them.

And as one part of their duty is to Indict Offenders, ſo another part is to protect the Innocent, in their Reputations, Lives and Intereſts, from falſe Accuſers, and malicious Conſpirators: They are to ſearch out the Truth of ſuch Informations

as come before them, and to reject the Indictment if it be not ſufficiently proved; and farther, if they have reaſonable Suſpicion of Malice, or wicked Deſigns againſt any Man's Life or Eſtate, by ſuch as offer a Bill of Indictment; the Laws of God and of the Kingdom, bind them to uſe all poſſible means to diſcover the villany; and if it appear to them (whereof they are the legal Judges) to be a Conſpiracy, or malicious Combination againſt the Accuſed, they are bound by the higheſt Obligations upon Men and Chriſtians, not only to reject ſuch a Bill of Indictment, but to Indict forthwith all the Conſpirators with their Abettors and Aſſociates.

Doubtleſs there hath been Pride and Covetouſneſs, Malice and deſire of Revenge in all Ages, from whence have ſprung falſe Accuſations and Conſpiracies; but no Age before us ever hatched ſuch Villanies, as the Popiſh Faction have contrived againſt our Religion, Lives, and Liberties. No Hiſtory affords an Example of ſuch Forgeries, Perjuries, Subornations, and Combinations of infamous Wretches, as have been lately diſcovered amongſt them, to defame loyal, innocent Proteſtants, and to ſhed their guiltleſs Blood in the Form and Courſe of Juſtice, and to make the King's moſt faithful Subjects appear to be the vileſt Traitors unto him. In this our miſerable State, Grand Juries are our only Security, inaſmuch as our Lives cannot be drawn into Jeopardy by all the malicious Crafts of the Devil, unleſs ſuch a Number of our honeſt

Country-

Countrymen ſhall be ſatisfied in the Truth of the Accuſations. For Prevention of ſuch Plotters of Wickedneſs as now abound, was that Statute made in the forty ſecond of *Edward* 3. 3. in theſe Words: "To eſchew the Miſchiefs and Damage done to divers of the Commons by *falſe* "*Accuſers*, which oftentimes have made the "Accuſations more for Revenge and ſingular "Benefit, than for the Profit of the King, or of "his People; which accuſed Perſons, ſome have "been taken, and ſometimes cauſed to come "before the King's Council by Writ, and otherwiſe, upon grievous Pain, againſt the Law; "It is aſſented and accorded for the good Government of the Commons, that no Man be "put to anſwer without Preſentment before Juſtices, or matter of Record, *&c.* according to "the old Law of the Land, and if any Thing be "done to the Contrary, it ſhall be void in Law, "*&c.*" And (ſaith the Statute of the twenty fifth of *Edward* 3. 4.) "None ſhall be taken by Petition, or Suggeſtion made to the King or to his "Council, unleſs it be by *Indictment*, or *Preſentment* of good and lawful People of the ſame "*Neighbourhood* where ſuch Deeds be done, *&c.*" That is to ſay, by a Grand Jury.

All our Lives are thus by Law truſted to the Care of our Grand Inqueſts, that none may be put to anſwer for their Lives, unleſs they Indict them. If a cauſleſs Indictment of any Man ſhould careleſly paſs from them, his guiltleſs

Blood, or what Prejudice ſoever the Accuſed ſhould thereby ſuffer, muſt reſt upon them, who by Breach of their Truſt were the Occaſions of it; their Fault cannot be excuſed by the Proſecution of an Attorney, or Solicitor General, or any other Accuſer, if it were in their Power to be more truly informed in the Caſe. Whoſoever prevents not an Evil when he may, conſents to it.

Now to oblige theſe Juries to the more conſcientious care, to Indict all that ſhall appear to them Criminals, and to ſave every Innocent, if it may be, from unjuſt Vexation and Danger, by Malice and Conſpiracy, our Anceſtors appointed an Oath to be impoſed upon them, which cannot be altered, except by Act of Parliament: Therefore every Grand Jury Man is ſworn, as the Foreman, in the Words following, *viz.*

" You ſhall diligently inquire, and true Pre-
" ſentment make of all ſuch Articles, Matters
" and Things as ſhall be given you in Charge.
" And of all other Matters and Things as ſhall
" come to your own Knowledge, touching this
" preſent Service. The King's Counſel, your
" Fellows, and your own, you ſhall keep ſecret:
" You ſhall preſent no Perſon for Hatred or
" Malice; neither ſhall you leave any one un-
" preſented for Favour, or Affection, for Love,
" or Gain, or any hopes thereof; but in all
" Things you ſhall preſent the Truth, the
" whole Truth, and nothing but the Truth, to
" the beſt of your Knowledge; ſo help you
" God."

" God." The Tenor of the Oath is plain, ſaving in theſe Words, " All ſuch Matters and " Things as ſhall be given you in Charge:" But whenſoever a general Commiſſion of Oyer and Terminer is iſſued, all Capital Offences are always the principal Matters given in Charge to the Grand Jury, which is enough for the preſent Diſcourſe of their Duty. Hence then it evidently appears, that every Grand Jury is bound to inquire diligently after the Truth of every Thing, for which they ſhall Indict or Preſent any Man: They are not only bound by the Eternal Law of loving their Neighbour, to be as tender of the Life and good Name of every Man, as of their own, and therefore to take heed to the Truth in Accuſing or Indicting any Man; but their expreſs Oath binds them to be diligent in their Inquiries, that is, to receive no Suggeſtion of any Crime for Truth, without examining all the Circumſtances about it, that fall within their Knowledge; they ought to conſider the firſt Informers, and Inquire as far as they can into their Aims and Pretences in their Proſecutions: If Revenge or Gain ſhould appear to be their Ends, there ought to be the greater ſuſpicion of the Truth of their Accuſations; the Law intending all Indictments to be for the Benefit of the King and of his People, as appears by the Statute of forty ſecond *Edward* 3. 3. Next, the Jury are bound to inquire into the Matters themſelves, whereof any Man is accuſed, as to the Time, Place, and all other Circumſtances of the Fact alledged.

There

There have been falſe Informers, that have ſuggeſted Things impoſſible; for inſtance, that Thirty Thouſand Men in Arms were kept in readineſs for an Exploit, in a ſecret Place, as if they could have been hid in a Chamber or a Cabinet. The Jury ought alſo to inquire after the Witneſſes, their Condition and Quality, their Fame and Reputation, their Means of Subſiſtence, and the Occaſion whereby the Facts whereof they bear Witneſs came to their Knowledge. Sometimes Perſons of debauched Lives and low Condition, have depoſed Diſcourſes, and treaſonable Counſels, againſt Perſons of Honour and Virtue, ſo unlikely to come to their Knowledge, (if ſuch Things had been) that their Pretence of being privy to them, was a ſtrong Evidence that their whole Story was falſe and feigned. It is alſo agreeable unto our antient Law and Practice, and of great Conſequence in caſes of Treaſon or Felony, that the Jury inquire after the Time, when firſt the Matters depoſed came to the Witneſſes Knowledge, and whether they purſued the Directions of the Law in the immediate Diſcovery and Purſuit of the Traitor or Felon, by Hue and Cry, or otherwiſe, or how long they concealed the ſame; their Teſtimony being of little or no Value, if they have made themſelves Partakers of a Crime by their voluntary Concealment.

Neither may the Jury lawfully omit to inquire concerning the Parties accuſed, of their Quality, Reputation, and the Manner of their Con-

Converſation, with many other Circumſtances; from whence they may be greatly helped to make right Inferences of the Falſhood, or Truth of the Crimes whereof any Man ſhall be accuſed. The Jury ought to be ignorant of nothing whereof they can inquire, or be informed, that may in their Underſtandings enable them to make a true Preſentment or Indictment of the Matters before them.

When a Grand Jury is ſworn to inquire diligently after all Treaſons, *&c.* it is natural and neceſſary to their Buſineſs, to think of whom they ſhould inquire; and it is plainly and eaſily reſolved, that they ought to inquire of every Man that can or will inform them; and if any kind of Treaſon be ſuggeſted to them, to have been done by any Man, or Number of Men, their Duty is the ſame in that particular, as it was in the general; that is, to ſeek diligently to find the Truth. It is certainly inconſiſtent with their Oaths, to ſhut their Ears againſt any lawful Man, that can tell them any thing relating unto a Crime in Queſtion before them: No Man will believe, nor can they themſelves think that they deſire to find and preſent the Truth of a Fact, if they ſhall refuſe to hear any Man, who ſhall pretend ſuch Knowledge of it, or ſuch material Circumſtances, as may be uſeful to diſcover it; whether that which ſhall be ſaid by the Pretenders, will anſwer the Juries expectations, muſt reſt in their Judgments, when they have heard them. It ſeems therefore from the Words of

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the Oath, that there is no Bound or Limit ſet (ſave their own Underſtanding or Conſcience) to reſtrain them to any Number or Sort of Perſons of whom they are bound to inquire; they ought firſt and principally to inquire of one another mutually, what Knowledge each of them hath of any Matters in Queſtion before them; the Law preſumes, that ſome at leaſt of ſo many ſufficient Men of a County, muſt know or have heard of all notable Things done there againſt the public Peace; for that End, the Juries are by the Law to be of the Neighbourhood to the Place where the Crimes are committed. If the Parties, and the Facts whereof they are accuſed, be known to the Jury, or any of them, their own Knowledge will ſupply the Room of many Witneſſes. Next they ought to inquire of all ſuch Witneſſes as the Proſecutors will produce againſt the Accuſed, they are bound to examine all fully and prudently to the beſt of their Skill; every Jury Man ought to aſk ſuch Queſtions (by the Foreman at leaſt) as he thinks neceſſary to reſolve any doubt that may ariſe in him, either about the Fact, or the Witneſſes, or otherwiſe; if the Jury be then doubtful, they ought to receive all ſuch further Teſtimony as ſhall be offered them, and to ſend for ſuch as any of them do think able to give Teſtimony in the Caſe depending.

If it be aſked how, or in what manner, the Juries ſhall inquire; the Anſwer is ready, According to the beſt of their Uunderſtandings. They only,

only, not the Judges, are ſworn to ſearch diligently to find out all Treaſons, *&c.* within their Charge, and they muſt and ought to uſe their own Diſcretion in the Way and Manner of their Inquiry: No Directions can legally be impoſed upon them by any Court, or Judges; an honeſt Jury will thankfully accept good Advice from Judges, as they are Aſſiſtants; but they are bound by their Oaths to preſent the Truth, the whole Truth, and nothing but the Truth, to the beſt of their own, [not the Judges,] Knowledge: Neither can they, without Breach of that Oath, reſign their Conſciences, or blindly ſubmit to the Dictates of others; and therefore ought to receive, or reject ſuch Advices, as they judge them good or bad.

If the Jury ſuſpect a Combination of Witneſſes againſt any Man's Life, (which perhaps the Judges do not diſcern) and think it needful to examine them privately and ſeparately, the Diſcretion of the Juries in ſuch a Caſe, is their only, beſt, and lawful Guide; though the example of all Ages and Countries, in examining ſuſpected Witneſſes privately and ſeparately, may be a good Direction to them.

Nothing can be more plain and expreſs, than the Words of the Oath are to this purpoſe. The Jurors need not ſearch the Law Books, nor tumble over heaps of old Records, for the Explanation of them. Our greateſt Lawyers may from hence learn more certainly our antient Law in this caſe, than from all the Books in their Studies.

dies. The Language wherein the Oath is penned is known and underſtood by every Man, and the Words in it have the ſame Signification, as they have whereſoever elſe they are uſed. The Judges (without aſſuming to themſelves a Legiſlative Power) cannot put a new Senſe upon them, other than according to their genuine, common Meaning. They cannot Magiſterially impoſe their Opinions upon the Jury, and make them forſake the direct Words of their Oath, to purſue their Gloſſes. The Grand Inqueſt are bound to obſerve alike ſtrictly every part of their Oath; and to uſe all juſt and proper Ways which may enable them fully to perform it; otherwiſe it were to ſay, that after Men had ſworn to inquire diligently after the Truth, according to the beſt of their Knowledge, they were bound to forſake all the natural and proper Means which their Underſtandings ſuggeſt for the Diſcovery of it, if it be commanded by the Judges.

And therefore, if they are jealous of a Combination of the Witneſſes, or that Corruption and Subornation hath been made uſe of, they cannot be reſtrained from aſking all ſuch Queſtions, as may conduce to the Sifting out of the Truth, nor from examining the Witneſſes privately and ſeparately; leſt (as *Forteſcue* ſays) the Saying of one ſhould provoke or inſtruct others to ſay the like *.

Nor are the Jury tied up to inquire only of ſuch Crimes as the Judges ſhall think fit to give

* *Forteſque D. Laud. Leg. Ang.* cap. 26.

them

them directly in Charge, much leſs of ſuch Bills only as ſhall be offered to them; but their Inquiry ought to extend to *all other Matters and Things which ſhall come to their Knowledge, touching the preſent Service.* If they have Ground to ſuſpect that any Accuſation before them proceeds from a Conſpiracy, they are obliged by their Oaths to turn the Inquiry that Way, and if they find cauſe, not only to reject the Bills offered upon ſuch Teſtimony, but to indict ſuch Witneſſes, and all the Abettors of their Villany.

They are carefully to examine what ſort of Men the Witneſſes are; for it is a Rule in all Laws, that *Turpes à Tribunalibus arcentur*, vile Perſons ought to be rejected by Courts of Juſtice. Such Witneſſes would deſtroy Juſtice, inſtead of promoting it. And the Grand Jury are to take care of admitting ſuch: They may and ought (if they have no certain Knowledge of them) to aſk the Witneſſes themſelves of their Condition, and Way of Living, and all other Queſtions, which may beſt inform them what ſort of Men they are. It is true, it may be lawful for the Witneſſes, in many Caſes, to refuſe to give Anſwer to ſome Demands which the Jury may make; as where it would be to accuſe themſelves of Crimes: But yet that very Refuſal, or avoiding to give direct Anſwers, may be of great uſe to the Jury, whoſe only Buſineſs is to find out the Truth; and who will be in a good Meaſure enabled to judge of the Credit of ſuch Witneſſes, as dare not clear themſelves of Crimes, which

which common Fame or the Knowledge of ſome of the Grand Inqueſt has charged them with.

If the Witneſſes which come before the Grand Jury upon an Indictment for Treaſon, ſhould diſcover upon their Examination, that they concealed it a long Time without juſt Impediment; The Preſumption of Law will be ſtrong againſt them, that no ſenſe of Honeſty or of their Duty brought them at laſt to reveal it.

It appears by *Bracton* *, that antient Writer of our Laws, that in Caſes of Treaſon the Juries were in his Days adviſed (as now they ought) to be ſo ſevere in their Inquiry within what Time the Witneſſes diſcovered the Treaſon after it came to their Knowledge; that if it were not evident that they revealed it with as much Expedition as was well poſſible for them, they were not by Law to be heard as Witneſſes: It was ſcarce permitted them (ſaith he) to *look back* in their going; ſuch ought to be their ſpeed to make known the Treaſon. Or if in any Caſe they be otherwiſe openly flagitious, though they be not legally infamous, or if they are Men of deſperate Fortunes, ſo that the Temptation of Want is manifeſtly ſtrong upon them, and the Reſtraint of Conſcience can be ſuppoſed to be little or none at all; whatever they ſay is, at leaſt, to be heard with extraordinary Caution, if not totally rejected.

* Bracton, L. 3. c. 3. *Non morari debet*, &c. *nec debet ad aliqua negotia, quamvis urgentiſſima, ſe convertere, quia vix permittitur ei quòd retro aſpiciat*, &c. *Si poſt intervallum accuſare velit, non erit de Jure audiendus.*

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In *Scotland**, ſuch a degree of Poverty, that a Witneſs cannot ſwear himſelf to be worth Ten Pounds is ſufficient to lay him aſide wholly in theſe high Concernments of Criminal Caſes: And in ſome other Kingdoms, to be a looſe Liver, is an Objection of the ſame force, againſt any produced for Witneſſes.

And for the better Diſcovery of the Truth of any Fact in Queſtion, the Credit of the Witneſſes, and the Value of the Teſtimonies; it is the Duty of the Grand Inqueſt to be well informed concerning the Parties indicted; of their uſual Reſidence, their Eſtates and manner of Living, their Companions and Friends, with whom they are accuſtomed to converſe, ſuch Knowledge being neceſſary to make a good Judgment upon moſt Accuſations; but moſt of all in Suſpicions, or Indictments of ſecret Treaſons, or Treaſonable Words, where the Accuſers can be of no Credit, if it be altogether incredible that ſuch Things as they teſtify ſhould come to their Knowledge.

Sometimes the Quality of the accuſed Perſon may ſet him at ſuch a Diſtance from the Witneſſes, that he cannot be ſuppoſed to have converſed with them familiarly, if his Wiſdom and Conduct has been always ſuch, that it is not credible he would truſt Men ſo inconſiderable, or mere Strangers to him, and ſuch as are wholly uncapable to aſſiſt in the Deſign which they pretend to diſcover.

* Sir *G. Mackenzie, Crim. Law.* lib. 26. 3.

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Can the Grand Inqueſt believe ſuch Teſtimony to be of any value? Or can they avoid ſuſpecting Malice, Combination, and Subornation in ſuch a Caſe? Or can they ſhew themſelves to be juſt, and conſcientious in their Duty, if they do not ſuſpend their Verdict until further Inquiry, and write *Ignoramus* on the Bill?

It is undoubtedly Law which we find reported in *Stiles* *, that *though there be Witneſſes who prove the Bill, yet the Grand Inqueſt is not bound to find it, if they ſee Cauſe to the contrary.*

Now to make their Inquiry more inſtrumental and advantageous to the Execution of Juſtice, they are enjoined by their Oath to keep ſecret *the King's Counſel, their Fellows, and their own.* Perhaps it is not ſufficiently underſtood or conſidered, what Duty is enjoined to every Man of a Grand Inqueſt by this Clauſe of their Oath, being ſeldom (if ever) explained to them in the general Charge of the Judges at Seſſions or Aſſizes: But it is neceſſary that they ſhould apprehend what Counſel of the King is truſted with them. Certainly there is or ought to be much more of it communicated to them, than is commonly thought, and in Things of the greateſt Conſequence. To them ought to be committed in the ſeveral Counties where any Proſecutions are begun, the firſt Informations and Suſpicions of all Treaſons, Murders, Felonies, Conſpiracies, and other Crimes, which may ſubvert the Government, endanger or hurt the King, or deſtroy

* *Stiles* Repor. 11.

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the Lives or Eſtates of the innocent People, or any way diſquiet or diſturb the common Peace. Our Law intends the Counſels of the King to be continually upon the Protection and Security of the People, and Prevention of all their Miſchiefs and Dangers by wicked, lawleſs, and injurious Men. And in order thereunto, to be adviſing how to right his wronged Subjects in general, if the public Safety be hazarded by Treaſons of any kind; or their Relations ſnatcht from them by Murderers, or any Way deſtroyed by malicious Conſpirators in form of Law; or their Eſtates taken away by Robbery and Thieves, or the Peace broken. And for theſe Ends to bring to exemplary Juſtice all Offenders, to deter others from the like Wickedneſs. And until theſe Counſels of the King come to the Grand Jury, he can bring no ſuch Criminals to Judgment, or to anſwer to the Accuſations and Suggeſtions againſt them. Hence it becomes unavoidably neceſſary to reveal to the Grand Juries all that hath been diſcovered to the King, or any of his Miniſters, Judges, or Juſtices, concerning any Treaſons, or other Offences, whereof any Man is accuſed. And where Suſpicion hath cauſed any to be Impriſoned, all the Grounds of their Suſpicions ought to be opened, concerning the Principals and the Acceſſories, as well before as after the Fact, all the Circumſtances and Preſumptions that may induce a Belief of their Guilt, and all Notices whatſoever, which may enable the Jury to make a more exact and effectual Inquiry, and to preſent

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the whole Truth. They themſelves will not only be Offenders againſt God by reaſon of their Oath, but ſubject to legal Puniſhments, if they knowingly conceal any Criminals, and leave them unpreſented; and none can be Innocent, who ſhall conceal from them any Thing that may help and aſſiſt them in their Duty.

The firſt notices of Crimes or Suſpicions of the Criminals, by whomſoever brought in, and the Intentions of Searching them out, and Proſecuting them legally, are called the King's Counſel; becauſe the principal Care of executing Juſtice is entruſted to him, and they are to be proſecuted at his Suit, and in his Name; and ſuch Proceedings are called Pleas of the Crown. From hence may be eaſily concluded, that the King's Counſel, which, by the Oath of the Grand Inqueſt, is to be kept ſecret, includeth all the Perſons offered to them to be indicted, and all the Matters brought in Evidence before them, all Circumſtances whatſoever whereof they are informed, which may any Way conduce to the Diſcovery of Offences; all Intimations given them of Abettors and Encouragers of Treaſons, Felonies, or Perjuries and Conſpiracies, or of the Receivers, Harbourers, Nouriſhers, and Concealers of ſuch Criminals.

Likewiſe the Oath, which enjoins the Counſel of their Fellows, and their own to be kept, implies, that they ſhall not reveal any of their perſonal Knowledge concerning Offences or Offenders; nor their Intentions to Indict any Man thereupon;

upon; nor any of the Propoſals and Advices amongſt them of Ways to inquire into the Truth of any Matter before them, either about the Crimes themſelves, or the Accuſers and Witneſſes, or the Party accuſed, nor the Debates thereupon amongſt themſelves, nor the Diverſity of Opinions in any Caſe before them.

Certainly this Duty of Secreſy concerning the King's Counſel was impoſed upon the Grand Inqueſt with great Reaſon, in order to the public Good. It was intended that they ſhould have all the Advantages which the ſeveral Caſes will afford, to make effectual Inquiries after Criminals, to offer them to Juſtice. If Packs of Thieves, private Murderers, ſecret Traitors, or Conſpirators and Suborners, can get Intelligence of all that is known of their Villanies, all the Parties concerned may conſult together, how to hide their Crimes, and prevent ſuch further Inquiries as can be made after them; they may form Sham-ſtories by agreement, that may have Appearance of Truth to miſlead and delude the Jury in their Examination, and avoid contradicting each other; they may remove or conceal all ſuch Things as might occaſion a fuller Diſcovery of their Crimes, or become circumſtantial Evidences againſt any of their Aſſociates, if one or more of them be known or taken, or is to be indicted. There hath been Confederates in high Crimes, who have ſecured themſelves from the Juſtice done upon ſome of their Companions, by their confident Appearance and Denial of the Fact, having been emboldened therein from their Knowledge

Knowledge of all the Grounds of Suſpicion, and all the Witneſſes examined about them, and the Matter of their Teſtimonies. It is too well known what Helps of diſcovering the whole Popiſh Plot were loſt, through the Want of keeping ſecret the King's Counſel therein, before the Matter was brought either to the Parliament, or to any Grand Inqueſt; and thereby they were diſabled for the effectual Execution of their Offices, and could never ſearch into the Bowels of that dangerous Treaſon in any County. But our Law having placed this great Truſt of Inquiry in the Prudence and Faithfulneſs of the Grand Inqueſt, was careful that they might not diſable themſelves for their own Truſt, by the Indiſcretion or worſer Fault of any of their own number, in revealing the King's Counſel or their own.

And as it was intended hereby to preſerve unto them all reaſonable Helps for their bringing to Light the hidden Miſchiefs that might diſturb the common Peace, ſo it was neceſſary to prevent the Flight of Criminals; if the Evidence againſt one that is accuſed ſhould be publicly known, whether it ſhould be ſufficient for an Indictment of him, and how far it extends to others; his Confederates and Accomplices might eaſily have notice of their Danger, and take Opportunity to eſcape from Juſtice.

Yet the Reaſon will be ſtill more manifeſt for keeping ſecret the Accuſations and the Evidence by the Grand Inqueſt, if it be well conſidered, how uſeful and neceſſary it is for diſcovering Truth

Truth in the Examinations of Witneſſes in many, if not in moſt Caſes that may come before them; when if by this Privacy Witneſſes may be examined in ſuch Manner and Order, as prudence and Occaſion direct; and no one of them be ſuffered to know who hath been examined before him, nor what Queſtions have been aſked him, nor what Anſwers he hath given, it may probably be found out whether a Witneſs hath been biaſſed in his Teſtimony by Malice or Revenge, or the Fear or Favour of Men in Power, or the Love or Hopes of Lucre and Gain, in preſent or future, or Promiſes of Impunity for ſome enormous Crime.

The Simplicity of Truth in a Witneſs may appear by the natural Plainneſs, Eaſineſs, and Directneſs of his Anſwers to whatſoever is propounded to him, by the Equality of his Temper, and Suitableneſs of his Anſwers to Queſtions of ſeveral kinds, and perhaps to ſome that may be aſked for Trial-ſake only of his Uprightneſs in other Matters. And the Falſeneſs, Malice, or ill Deſign of another, may be juſtly ſuſpected from his Studiouſneſs and Difficulty in Anſwering, his Artifice and Cunning in what he relates, not agreeable to his Way of Breeding and Parts; his reſerved, indirect, and evaſive Replies to eaſy Queſtions; his Pretences of Doubtfulneſs and want of remembering Things of ſuch ſhort Dates, or ſuch Notoriety, that it is not credible he could be ignorant or forgetful of them. In this Manner the Truth may be evidenced to the Satis-

faction of the Jurors Conſciences, by the very Demeanor of the Witneſſes in their private Examinations, inaſmuch as the greateſt Certainty doth often ariſe from the careful Obſervation and comparing of ſuch minute Matters; of which a diſtinct Account is not poſſible to be given to a Court: And for that Reaſon (among others) the Juries are made the only abſolute Judges of their Evidence.

Yet further, their private Examinations may diſcover Truth out of ſome Diſagreement of the Witneſſes, when ſeparately interrogated, and every of the Grand Inqueſt aſks them Queſtions for his own Satisfaction about the Matters which have come to his particular Knowledge, and this freely, without Awe or Control of Judges, or Diſtruſt of his own Parts, or Fear to be checked for aſking impertinent Queſtions.

Conſpiracies againſt the Lives of the Innocent, in a Form of Juſtice, have been frequently detected by ſuch ſecret and ſeparate Examination of Witneſſes. The Story of *Suſanna* is famous; that two of their Elders, and Judges of great Credit and Authority, teſtified in the open Aſſembly a malicious Invention againſt her, with all the Solemnity uſed in Capital Caſes, and Sentence of Death paſſed upon her, and was ready to be executed, had not wiſe *Daniel* cried out in her behalf *: "Are ye ſuch Fools, O *Iſraelites*,

* Note, That the Teſtimony given in the Aſſembly without ſeparating the Witneſſes, and trying the Truth by Circumſtances, was eſteemed no Examination or Knowledge of the Truth.

"that

" that without Examination or Knowledge of " the Truth, ye have condemned a Daughter of " *Iſrael?* Return (ſaid he) again to Judgment, " and put theſe two one far from another, and I " will examine them:" And being aſked ſeparately (though in Public, the Teſtimony having been ſo given before) concerning the Place of the Fact then in Queſtion, they had not agreed upon that Circumſtance, as they had upon their Story; and ſo their Falſhood became manifeſt, one ſaying the Adultery was committed under a *Lentiſk* Tree, the other, it was under a *Prime* Tree: And upon that Conviction of the falſe Witneſſes, the whole Aſſembly cried with a loud Voice, and praiſed God. Theſe falſe Witneſſes were put to Death, as their Law required.

We have alſo a late Inſtance of the Uſefulneſs of private and ſeparate Examinations, in the Caſe of the Lord *Howard*, againſt whom the Attorney General proſecuted an Accuſation of Treaſon, the laſt Midſummer Term, before the Grand Inqueſt for *Middleſex*. Mrs. *Fitz-Harris*, and *Tereſa Peacock* her Maid, ſwore Words of Treaſon againſt him poſitively, and agreed in every Point whilſt they were together: But by the Prudence of the Inqueſt, being put aſunder, and the Miſtreſs aſked how her Maid came to be admitted to the Knowledge of ſuch Matters; ſhe had an Evaſion ready, pretending her Maid had craftily hearkened behind a Wainſcot Door, and ſo heard the Treaſon. But the Maid not ſuſpecting what her Miſtreſs had ſaid, continued

in her firſt Story, that ſhe heard the Treaſon from the Lord *Howard* himſelf, and was as much truſted by him as her Miſtreſs: By this Circumſtance the Falſhood and Perjury (which Mrs. *Fitz-Harris* hath ſince acknowledged) was diſcovered; and the Snare for the Life of the injured Lord was broken, as is manifeſt by his Liberty now obtained by Law.

Witneſſes may come prepared, and tell plauſible Stories in open Court, if they know from the Proſecutor to what they muſt anſwer; and have agreed and acquainted each other with the Tales they will tell, and have reſolved to be careful, that all their Anſwers to croſs Interrogatories, may be conformable to their firſt Stories: And if theſe relate only to Words ſpoken at ſeveral Times in Private to diſtinct Witneſſes, in ſuch a Caſe, Evidence, if given in open Court, may ſeem to be very ſtrong againſt the Perſon accuſed, though there be nothing of Truth in it. But if ſuch Witneſſes were privately and ſeparately Examined by the Grand Inqueſt, as the Law requires, and were to Anſwer only ſuch Queſtions as they thought fit, and in ſuch Order as was beſt in their Judgments, and moſt natural to find out the Truth of the Accuſation, ſo that the Witneſſes could not gueſs what they ſhould be aſked firſt, or laſt, nor one conjecture what the other had ſaid, (which they are certain of when they know beforehand what the Proſecutor will aſk in Court of every one of them, and what they have reſolved to anſwer) if the Inqueſt ſhould put them

them out of their Road, and then compare all their ſeveral Anſwers together, they might poſſibly diſcern Marks enough of Falſhood, to ſhew that their Teſtimonies ought not to be depended upon, where Life is in Queſtion.

By what is now ſaid, the Reaſonableneſs of this Inſtitution of Secrecy may be diſcerned in reſpect to the Diſcovery of Truth, and the Protection of the Innocent from malicious Combinations and Perjuries. Yet the ſame Secrecy of the King's Counſel is no leſs neceſſary to reſerve the Guilty for Puniſhment; when the Evidence againſt any Party accuſed is not manifeſt and full, it may be kept without Prejudice under Secrecy until further Inquiry; and if ſufficient Proof can afterwards be made of the Offence, an Indictment may be found by a Grand Inqueſt, and the Party brought to anſwer it: But when the Examinations are in open Court, or the King's Counſels any other way divulged, and the Evidence is Weak, and leſs than the Law requires, it is not probable that it will be more or ſtronger, and ſhould an Indictment be found, and the Party tried by a Petit Jury, whilſt the Evidence is not full, they muſt and ought to acquit him, and then the further Proſecution for the ſame Offence is for ever barred, though his Guilt ſhould afterward be manifeſt, and confeſſed by himſelf.

From hence may certainly be concluded, that Secrecy in the Examinations and Inquiries of Grand Juries is in all reſpects for the Intereſt and Advantage of the King. If he be concerned to

have ſecret Treaſons, Felonies, and all other Enormities brought to Light, and that none of the Offenders ſhould eſcape Juſtice; if the Gain of their Forfeitures be thought his Intereſt (which God forbid) then the firſt Notices of all dangerous Crimes, and wicked Confederacies, ought to be ſecretly and prudently purſued and ſearched into by the Grand Inqueſt: The Accuſers and Witneſſes ought not to publiſh in a Court, before a Multitude, what they pretend to know in ſuch Caſes, until the Diſcretion of ſo many honeſt Men of the Neighbourhood, hath firſt determined whether their Teſtimony will amount to ſo good and full Evidence, that it may be made public with ſafety to the King and People in order to Juſtice. Elſe they are obliged by Oath to lock up in their own Breaſts all the Circumſtances and Preſumptions of Crimes, until they, or ſuch as ſhall ſucceed in the ſame Truſt, ſhall have diſcovered (as they believe) Evidence enough to convict the Accuſed, and then, and not before, they are to accuſe the Party upon Record, by finding the Bills, as it is uſually called. But when Bills are offered without ſatisfactory Evidence, and they neither know nor can learn any more, they ought for the King's ſake, to indorſe *Ignoramus* upon them, leſt his Honour and Juſtice be ſtained, by cauſing or permitting ſuch Proſecution of his People in his own Name, and at his Suit, as ſhall appear upon their Trial and Acquittal to have been frivolous, or elſe malicious Deſigns upon their Lives and Fortunes.

If

If it ſhould be ſaid, that whatſoever Reaſons there are for this Oath of Secrecy; yet it cannot deprive the King of the Benefit of having the Evidence made public, if he deſires it, and that the Grand Jury do not break their Oaths when the King, or the Proſecutor for him, will have it ſo: It is not hard to ſhew that ſuch Notions have no Foundation in Law or Reaſon, and ſeem to come from Men who have not well ſtudied the firſt Principles of the *Engliſh* Government, or of true Religion.

Whoſoever hath learnt, that the Kings of *England* were ordained for the good Government of the Kingdom in the Execution of the Laws, muſt needs know, that the King cannot lawfully ſeek any other Benefit in judicial Proceedings, than that common Right and Juſtice be done to the People according to their Laws and Cuſtoms. Their Safety and Proſperity are to be the Objects of his continual Care and Study, that being their higheſt Concern. The Greatneſs and Honour of a Prince conſiſts in the Virtue, Multitude, Wealth and Proweſs of his People; and his greateſt Glory is, by the Excellence of his Government ſo to have encouraged Virtue and Piety, that few or no Criminals are to be found in his Dominions. Thoſe who have made this their principal Aim, have in ſome Places ſo well ſucceeded, as to introduce ſuch a Diſcipline and Rectitude of Manners, as rendered every Man a Law unto himſelf. As it is reported in the Hiſtory of *Peru* *,

* *Gar. de la Vega. Hiſt. de los Incas.*

that though the Laws were ſo ſevere as to make very ſmall Crimes Capital, yet it often fell out, that not one Man was put to Death in a Year, within the whole Compaſs of that vaſt Empire.

The King's only Benefits in finding out and puniſhing Offenders by Courts of Juſtice, are the Preſervation and Support of the Government, the Protection of the Innocent, revenging their Wrongs, and preventing further Miſchiefs by the Terrors of exemplary Puniſhments.

The King is the Head of Juſtice in the Eſteem of our Laws, and the whole Kingdom is to expect Right to be done them in his ſeveral Courts inſtituted by Law for that purpoſe. Therefore **Writs iſſue out in his Name in all Caſes where Relief is ſought by the Subjects: And the Wrongs done to the Lives or Limbs of the People, are ſaid to be done againſt the Peace of the King, his Crown and Dignity, reckoning it a Diſhonour to him and his Government, that Subjects ſhould not,** whilſt they live within the Law, enjoy Peace and Security. It ought to be taken for a Scandal upon the King, when he is repreſented in a Court of Juſtice as if he were partially concerned, or rather inclined to deſire, that a Party accuſed ſhould be found Guilty, than that he ſhould be declared Innocent, if he be ſo in Truth. Doubtleſs the King ought to wiſh in all Inquiries made after Treaſon, Felonies, *&c.* that there were none to be found in his Kingdom; and that whoſoever is accuſed, might be able to anſwer ſo well and truly for himſelf, as to ſhew the Accuſation

ſation to be erroneous or falſe, and to be acquitted of it. Something of this appears in the common Cuſtom of *England*, that the Clerks of the King's Courts of Juſtice, when any Man hath pleaded Not Guilty to an Indictment, pray forthwith that GOD would ſend him a good Deliverance.

The Deſtruction of every Criminal is a loſs to a Prince, and ought to be grievous to him; in the common regard of Humanity, and the more particular Relation of his Office, and the Name of Father. The King's Intereſt and Honour is more concerned in the Protection of the Innocent, than in the Puniſhment of the Guilty. This Maxim can never run them into Exceſſes; for it hath ever been looked upon as a Mark of great Wiſdom and virtue in ſome Princes and States, upon ſeveral Occaſions to deſtroy all Evidences againſt Delinquents; and nothing is more uſual than to compoſe the moſt dangerous Diſtempers of Nations by Acts of general Amneſty, which were utterly unjuſt, if it were as great a Crime to ſuffer the Guilty to eſcape, as to deſtroy the Innocent. We do not only find thoſe Princes repreſented in Hiſtory under odious Characters, who have baſely murdered the Innocent; but ſuch as by their Spies and Informers were too inquiſitive after the Guilty: whereas none was ever blamed for Clemency, or for being too gentle Interpreters of the Laws. Though *Trajan* was an excellent Prince, endowed with all heroical Virtues, yet the moſt eloquent Writers, and

his beſt Friends, found nothing more to be praiſed in his Government, than that in his Time, all Men might think what they pleaſed, and every Man ſpeak what he thought, and he had no better Way of diſtinguiſhing himſelf from his wicked Predeceſſors, than by hanging up the Spies and Informers, whom they had employed for the diſcovery of Crimes *. But if the Puniſhment of Offenders were as univerſally neceſſary as the Protection of the Innocent, he were as much to be abhorred as *Nero*; and that Clemency which is ſo highly praiſed, were to be looked upon as the worſt of Vices, and thoſe who have hitherto been taken for the beſt of Princes, were altogether as deteſtable as the worſt.

Moreover all human Laws were ordained for the Preſervation of the Innocent, and for their ſakes only are Puniſhments inflicted. That thoſe of our own Country do ſolely regard this, was well underſtood by *Forteſcue* †, who ſaith, "Indeed I could rather wiſh Twenty Evil-doers to eſcape Death through Pity, than one Man to be unjuſtly condemned." Such Blood hath cried to Heaven for Vengeance againſt Families and Kingdoms, and their utter Deſtruction hath enſued. If a Criminal ſhould be acquitted by too great Lenity, Caution, or otherwiſe, he may be reſerved for future Juſtice from Man or GOD, if he doth not repent; but it is impoſſible that Satisfaction or

* *Tacit. lib.* 1. *Hiſt.*

† Fort. *de Laud. Leg. Ang.* ch. 27.

Reparation

Reparation ſhould be made for innocent Blood, ſhed in the Forms of Juſtice.

Without all Queſtion, the King's only juſt Intereſt in the Evidence given againſt the Party accuſed, and in the manner of taking it, is to have the Truth made manifeſt, that Juſtice may thereupon be done impartially: And if Accuſations may be firſt examined in ſecret more ſtrictly and exactly, to prevent Fraud and Perjury, than is poſſible to be done in open Court, (as hath before appeared) then it is for the King's Benefit to have it ſo. And nothing done in, or by a Court, about the Trial of the Accuſed, is for the King, (in the Senſe of our Law) unleſs it ſome Way conduce to Juſtice in the Caſe. The Witneſſes which the Proſecutor brings, are no farther for the King, than they tell the Truth and the whole Truth, impartially; and by whomſoever any others may be called upon the Inquiry, or the Trial to be examined, if they ſincerely deliver the Truth of the Matters in Queſtion, they are therein the King's Witneſſes, though the Accuſed be acquitted by reaſon of their Teſtimonies. If ſuch as are offered by the Attorney General to prove Treaſon againſt any Man, ſhall be found to ſwear falſly, maliciouſly, or for Reward or Promiſes, though they depoſe poſitively Facts of Treaſon againſt the Accuſed, yet they are truly and properly Witneſſes againſt the King, by endeavouring to prevent Juſtice, and deſtroy his Subjects: Their Malice and Villany being confeſſed or proved, the King's Attorney ought (*ex Officio*)

Officio) to Proſecute them in the King's Name, and at his Suit, for their Offences againſt him in ſuch Depoſitions pretended to have been for him: And the legal Form of the Indictment ought to be for their ſwearing falſly and maliciouſly againſt the Peace of the King, his Crown and Dignity. The Proſecutors themſelves, notwithſtanding their big Words, and aſſuming to themſelves, to be for the King, if their Proſecution ſhall be proved to be Malicious, or by Conſpiracy againſt the Life or Fortune of the Accuſed, they are therein againſt the King, and ought to be indicted at the King's Suit, for ſuch Proſecutions done againſt his Crown and Dignity. And if an Attorney General ſhould be found knowingly guilty of Abetting ſuch a Conſpiracy, his Office could not excuſe or legally exempt him from ſuffering the villanious Judgment, to the Deſtruction of him and his Family. It is eſteemed in the Law one of the moſt odious Offences againſt the King, to attempt in his Name to deſtroy the Innocent, for whoſe Protection he himſelf was ordained. Queen *Elizabeth* had the true Senſe of our Law, when the Lord *Burleigh*, upon Sir *Edward Coke* her then Attorney's coming into her Preſence, told her, this is he who Proſecutes *pro Domina Regina*, for our Lady the Queen; and ſhe ſaid, ſhe would have the Form of the Records altered; for it ſhould be *Attornatus Generalis qui pro Domina veritate ſequitur* *; The Attorney General who Proſecutes for our Lady the

* Coke *Inſt.* 3d. part, p. 79.

Truth,

Truth. Whoever is truſted in that Employment, diſhonours his Maſter and Office, if he gives Occaſion to the Subjects to believe that his Maſter ſeeks other Profits or Advantages by Accuſations, than the common Peace and Welfare: He ought not to excite a Jealouſy in any of their Minds, that Confiſcations of Eſtates are deſigned or deſired by any of the King's Miniſters; whoſoever makes ſuch Advantages to the Crown their principal Aim in accuſing, are either Robbers and Murderers, (in the Scripture ſenſe) in ſeeking innocent Blood for Gain, or in the mildeſt Conſtruction, (ſuppoſing the Accuſation to be on good Grounds) they ſhew themſelves to be of corrupt Minds, and a Scandal to their Maſter and the Government. Profit or Loſs of that kind ought to have no Place in judicial Proceedings againſt ſuſpected Criminals, but Truth is only to be regarded; and for this Reaſon the Judgments given in Courts of human Inſtitution, are in Scripture called, the Judgments of GOD, who is the GOD of Truth.

Yet farther, if any Benefit to the King could be imagined by making the Evidence to the Grand Jury public, it could not come in Competition with the Law expreſſed in their Oath; which by conſtant uninterrupted uſage, for ſo many Ages, hath obtained the force of Law. *Bracton* and *Briton*, in their ſeveral Generations bear Witneſs, that it was then practiſed; and greater Proof of it need not be ſought, than the Diſputes that appear by the Law-Books to have been

been amongſt the antient Lawyers, whether it was Treaſon or Felony for a Grand Jury to diſcover, either who was indicted, or what Evidence was given them. The Truſt of the Grand Juries was thought ſo ſacred in thoſe Ages, and their Secrecy of ſo great Concern to the Kingdom, that whoſoever ſhould break their Oath therein, was by all thought worthy to die; only ſome would have had them ſuffer as Traitors, others as Felons *. And at this Day it is held to be a high Miſpriſion, puniſhable by Fine and Impoveriſhment. The Law then having appointed the Evidence to be given to Grand Juries in ſecret, the King cannot deſire to have it made public. He can do no Wrong, ſaith the old Maxim; that is, He can do nothing againſt the Law, nor is any Thing to be judged for his Benefit that is not warranted by Law; his Will, Commands, and Deſires, are therein no otherwiſe to be known: He cannot change the legal Method or Manner of inquiring by Juries, nor vary in any particular Caſe from the cuſtomary and general Forms of judicial Proceedings; he can neither abridge nor enlarge the Power of Juries, no more than he can leſſen the legal Power of the Sheriffs or Judges, or by ſpecial Directions order the one how they ſhall execute Writs, and the other how they ſhall give Judgments, though theſe made by himſelf.

It is Criminal, no doubt, for any to ſay, that the King deſires a Court of Juſtice, or a

* Coke's *Inſtit.* 3d. part, p. 107.

Jury,

Jury, to vary from the Direction of the Law, and they ought not to be believed therein: If Letters, Writs, or other Commands ſhould come to the Judges for that Purpoſe, they are bound by their Oaths not to regard them, but to hold them for Null; the Statutes of 2 *E.* 3. 8. and 20 *E.* 3. 1. are expreſs; That if any Writs or Commandments come to the Juſtices in Diſturbance of the Law, or the Execution of the ſame, or of Right to the Parties, they ſhall proceed as if no ſuch Letters, Writs, or Commands were come to them: And the Subſtance of theſe and other Statutes, is inſerted into the Oath taken by every Judge; and if they be under the moſt ſolemn and ſacred Tie in the Execution of Juſtice, to hold for nothing or none the Commands of the King under the great Seal; ſurely the Word, or Deſire of an Attorney General in the like Caſe ought to be leſs than nothing.

Beſides, they are ſtrangely miſtaken, who think the King can have an Intereſt different from, or contrary unto that of the Kingdom, in the Proſecution of Accuſed Perſons: His Concernments are involved in thoſe of his People; and he can have none diſtinct from them. He is the Head of the Body Politic, and the legal Courſe of doing Juſtice, is like the orderly Circulation of the Blood in the natural Bodies, by which both Head and Body are equally preſerved, and both periſh by the Interruption of it.

The King is obliged to the utmoſt of his Power to maintain the Law, and Juſtice in its due Courſe,

Courſe, by his Coronation Oath, and the Truſt thereby repoſed in him. In former Ages he was conjured not to take the Crown, unleſs he reſolved punctually to obſerve it. *Bromton* and others ſpeaking of the Coronation of *Richard* the firſt, deliver it thus, that having firſt taken the Oath; *Deinde indutus Mantello, ductus eſt ad Altare, & conjuratus ab Archiepiſcopo, & prohibitus ex parte Dei, ne hunc Honorem ſibi aſſumat, niſi in mente habeat tenere Sacramenta & Vota quæ ſuperius fecit. Et Ipſe reſpondit, ſe per Dei auxilium omnia ſupradicta obſervaturum bona fide. Deinde cepit Coronam de Altari, & tradidit eam Archiepiſcopo, qui poſuit eam ſuper caput Regis, & ſic Coronatus Rex, ductus eſt ad ſedem ſuam* *. Afterward, cloathed with the Royal Robe, he is led to the Altar, and conjured by the Archbiſhop, and forbid in the Name of God, not to aſſume that Honour, unleſs he intended to keep the Oaths and Vows he had before made; and he anſwered, by God's help he would faithfully obſerve all the Premiſes: And then he took the Crown from off the Altar, and delivered it to the Archbiſhop, who put it upon the King's Head; and the King thus crowned, is led unto his Seat. The Violation of which Truſt cannot but be as well a Wound unto their Conſciences, as bring great Prejudice upon their Perſons and Affairs.

* *Brom. p.* 1159. *Mat. Paris, p.* 153. *Hoved. p.* 374. *Baker. p.* 68.

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The Common Law that exacts this, doth ſo far provide for Princes, that having their Minds free from Cares of preſerving themſelves they may reſt aſſured, that no Acts, Words or Deſigns, that may bring them into danger, can be concealed from the many Hundreds of Men, who by the Law are appointed in all Parts of the Kingdom, watchfully to take Care of the King; and are ſo far concerned in his Safety, that they can hope no longer to enjoy their own Lives and Fortunes in Peace, than they can preſerve him, and the good Order which according to the Laws he is to uphold.

It is the joint Intereſt of King and People, that the antient Rules of doing Juſtice be held ſacred and inviolable; and they are equally concerned in cauſing ſtrict Inquiries to be made into all Evidences given againſt ſuſpected, or accuſed Perſons, that the Truth may be diſcovered; and ſuch as dare to diſturb the public Peace by breaking the Laws, may be brought to Puniſhment. And the whole Courſe of judicial Proceedings in Criminal Cauſes, ſhews that the People is therein equally concerned with the King, whoſe Name is uſed. This is the Ground of that diſtinction which Sir *Edward Coke* makes between the Proceedings in Pleas of the Crown, and Actions for Wrongs done to the King himſelf. " In Pleas of the Crown, or other com-
" mon Offences, Nuſances, *&c.* principally con-
" cerning others, or the Public, there the King
" by Law muſt be appriſed by Indictment, Pre-
" ſentment,

" ſentment, or other matter of Record; but " the King may have an Action for ſuch Wrong " as is done to himſelf, and whereof none other " can have an Action but the King, without be- " ing appriſed by Indictment, Preſentment, or " other matter of Record, as a *Quare impedit*, " *Quare incumbravit*, a Writ of Attaint, of Debt, " Detinue of Ward, Eſcheat, Scire fac, pur re- " pealer patent *," *&c.* Unto which every Man muſt anſwer: But no Man can be brought to anſwer of public Crimes at the King's Suit, otherwiſe than by Indictment of a Grand Jury.

The whole Courſe of doing Juſtice upon Criminals, from the beginning of the Proceſs, unto the Execution of the Sentence, is, and ever was eſteemed to be the Kingdom's Concernment, as is evidenced by the frequent Complaints made in Parliament, that Capital Offenders were Pardoned to the Peoples damage and wrong. In the 13 *Richard* 2. it is ſaid, that the King hearing the grievous Complaints of his Commons in Parliament, of the outrageous Miſchiefs which happened unto the Realm, for that Treaſons, Murders, and Rapes of Women, be commonly done, and committed, and the more becauſe Charters of Pardon had been eaſily granted in ſuch Caſes; and thereupon it was enacted, that no Pardon for ſuch Crimes ſhould be granted, unleſs the ſame were particularly ſpecified therein: and that if a Pardon were otherwiſe granted for the Death of a Man, the Judges ſhould not-

* Coke 3d. *Inſt.* p. 136.

withſtanding

withſtanding inquire by a Grand Jury of the Neighbourhood concerning the Death of every ſuch Perſon, and if he were found to have been wilfully Murdered, ſuch Charter of Pardon to be diſallowed; and Proviſions were made by impoſing grievous Fines upon every Perſon, according to his Degree and Quality, or Impriſonment, who ſhould preſume to ſue to the King for any Pardons of the aforeſaid Crimes: and that ſuch Perſons might be known to the whole Kingdom, their Names were to be upon ſeveral Records. The like had been done in many Statutes made by ſeveral Parliaments, as in the 6 *Ed.* 1. 9. the 2 *Ed.* 3. 2. the 10 *Ed.* 3. 2. and the 14 *Ed.* 3. 15. wherein it was acknowledged by the King in Parliament. "That the Oath of "the Crown had not been kept, by reaſon of "the Grant of Pardons contrary to the aforeſaid "Statutes; and enacted, that any ſuch Charter "of Pardon, from thenceforth granted againſt "the Oath of his Crown and the ſaid Statutes, "the ſame ſhould be holden for none." In the 27 *Edw.* 3. 2. It is further provided, for preventing the Peoples damage by ſuch Pardons; "That from thenceforth in every Charter of Par-"don of Felony, which ſhall be granted at any "Man's ſuggeſtion, the ſaid ſuggeſtion, and the "Name of him that maketh the ſuggeſtion, ſhall "be compriſed in the ſame Charter; and if after "the ſame ſuggeſtion be found untrue, the Char-"ter ſhall be diſallowed and holden for none: And "the Juſtices before whom ſuch Charter ſhall be

"alledged,

" alledged, ſhall inquire of the ſame ſuggeſtion, " and that as well of Charters granted before " this Time, as of Charters which ſhall be " granted in Time to come, and if they find " them untrue, then they ſhall diſallow the Char- " ter ſo alledged, and ſhall moreover do as the " Law demandeth."

Thus have Parliaments from Time to Time declared, that the Offences againſt the Crown are againſt the public Welfare, and that Kings are obliged by their Oath and Office to cauſe Juſtice to be done upon Traitors and Felons, for the Kingdom's ſake; according to the antient common Law declared by *Magna Charta* in theſe Words: *Nulli negabimus, nulli vendemus, nulli differemus Juſtitiam**. We will ſell to no Man, we will not deny or defer to any Man either Juſtice or Right.

And as the Public is concerned, that the due and legal Methods be obſerved in the Proſecution of Offenders, ſo likewiſe doth the Security of every ſingle Man in the Nation depend upon it: No Man can aſſure himſelf he ſhall not be accuſed of the higheſt Crimes. Let a Man's Innocence and Prudence be what it will, yet his moſt inoffenſive Words and Actions are liable to be miſconſtrued, and he may, by Subornation and Conſpiracy, have Things laid to his Charge, of which he is no ways Guilty. Who can ſpeak or carry himſelf with that Circumſpection, as not to have his harmleſs Words or Actions wreſted

* 9 *Hen.* 30. 29.

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to another ſenſe than he intended? Who can be ſecure from having a Paper put into his Pockets, or laid in his Houſe, of which he ſhall know nothing till his Accuſation? Hiſtory affords many Examples of the deteſtable Practices in this kind of wicked Court Paraſites, among which one may ſuffice for Inſtance, out of *Polybius*, an approved Author *. "*Hermes*, a powerful Favourite under *Antiochus* the Younger, but a Man noted to be a Favourer of Liars, was made uſe of againſt the innocent and brave *Epigenes*: He had long watched to kill him, for that he found him a Man of great Eloquence and Valour, having alſo Favour and Authority with the King: He had unjuſtly but unſucceſsfully accuſed him of Treaſon, by falſe gloſſes put upon his faithful Advice given to the King in Open Council; this not prevailing, he by Artifice got him put out of his Command, and to retire from Court; which done, he laid a Plot againſt him, with the help and Counſel of (one of his Accomplices) *Alexis*, and writing Letters as if they had been ſent from *Molon*, (who was then in open Rebellion againſt his Prince, for fear, amongſt other Reaſons, of the Cruelty and Treachery of *Hermes*) and corrupted one of *Alexis*'s Servants with great Promiſes, who went to *Epigenes*, to thruſt the Letters ſecretly amongſt his other Writings, which when he had done, *Alexis* came ſuddenly to *Epigenes*, demanding of him, if he had received any Letter from *Molon*: And when he ſaid he had none, the other ſaid,

* *Polybius*, lib. 5.

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he was confident he ſhould find ome; wherefore entering the Houſe to ſearch, he found the Letters, and taking this occaſion, ſlew him, [leſt if the Fact had been duly examined, the Conſpiracy had been diſcovered.] Theſe Things happening thus, the King thought that he was juſtly ſlain; in this Manner the worthy *Epigenes* ended his Days: But this great Man's Deſigns did not reſt here; for within a while, heightened with Succeſs, he ſo arrogantly abuſed his Maſter's Authority, as he grew dangerous to the King himſelf, as well as to thoſe about him; inſomuch as *Antiochus* was forced, for that he hated and feared *Hermes*, to take away his Life by Stratagem, thereby to ſecure himſelf." By theſe, and a Thouſand other Ways, the moſt unblemiſhed Innocence may be brought into the greateſt Dangers. Since then every Man is thus eaſily ſubject to Queſtion, and what is one Man's caſe this Day, may be another Man's to Morrow, it is undoubtedly every Man's Concern, to ſee (as far as in him lies) in every Caſe, that the accuſed Perſon may have the Benefit of all ſuch Proviſions, as the Law hath made for the Defence of Innocence and Reputation.

Now to this End there is nothing ſo neceſſary as the ſecret and ſeparate Examination of Witneſſes; for though perhaps, as hath been already obſerved, it may be no very difficult Thing for ſeveral Perſons, who are permitted to diſcourſe with each other freely, and to hear, or be told, what each of their Fellows had been aſked, and anſwered,

anſwered, to agree in one Story; eſpecially if the Jury may not aſk what Queſtions they ſhall think fit for the Satisfaction of their own Conſciences; but that they ſhall be ſo far under the Correction and Cenſure of the Judges, as to have the Queſtions which they put called by them Triſles, impertinent, and unfit for the Witneſſes to ſpeak to: yet if they be examined apart, with that due Care of ſifting out all the Circumſtances which the Law requires, where every Man of the Jury is at full Liberty to inquire into any thing for his clearer Information, and that with what Deliberation they think fit; and all this be done with that Secrecy which the Law commands; it will be almoſt impoſſible for a Man to ſuffer under a falſe Accuſation.

Nor has the Law been leſs careful for the Reputation of the Subjects of *England*, than for their Lives and Eſtates; and this ſeems to be one Reaſon why, in Criminal Caſes, a Man ſhall not be brought to an open legal Trial by a Petit Jury, till the Grand Jury have firſt found the Bill. The Law having intruſted the Grand Inqueſt in a ſpecial manner with their good Names; they are therefore not only to inquire whether the Fact that is laid, was done by the Party accuſed, but into the Circumſtances thereof too, whether it were done traiterouſly, felonioufly, or maliciouſly, *&c.* according to the manner charged: Which Circumſtances are not barely Matter of Form, but do conſtitute the very Eſſence of the Crime: And laſtly, into the Credit of the Witneſſes,

neſſes, and that of the Party accuſed. And unleſs they find both the Fact proved upon him, and ſtrong Preſumptions of ſuch aggravating Circumſtances attending it, as the Law requires in the Specification of ſuch Crime; and likewiſe are ſatisfied in the Credibility of the Witneſſes; they ought not to expoſe the Subject to an open Trial in the Face of the County, to a certain Loſs of his Reputation, and Hazard of his Life and Eſtate. Moreover, ſhould this Practice of public Examination prevail, and the Jurors Oath of Secrecy continue, how partial and unequal a Thing would it be to declare that to all the World, which will blaſt a Man's good Name, and religiouſly conceal what they may know tending to his Juſtification? To examine Witneſſes, perhaps ſuborned, certainly prepared, and have Evidence dreſſed up with all the Advantages that Lawyers Wits can give it, of the fouleſt Crimes a Man can be guilty of, and this given before ſome Thouſands againſt him, and yet for the ſame Court to ſwear thoſe, whom the Law makes Judges in the Caſe, not to reveal one Word of thoſe Reaſons, which have ſatisfied their Conſciences of his Innocence? What is this, but an Artifice of ſlandering Men, it may be, of the moſt unſpotted Converſation, and of abuſing Authority, not ſo much to find Men guilty, as to make them infamous? After this Ignominy is fixed, what Judgment can the Auditors, and from them the World, make, but

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of high Probability of Guilt in the Party accuſed, and Perjury in the Jury?

This Courſe, if it ſhould be continued, muſt needs be of moſt dangerous Conſequence to all ſorts of Men: It will both ſubject every one without Relief to be defamed, and fright the beſt and moſt conſcientious Men from ſerving on Grand Juries, which is a moſt neceſſary Part of their Duty.

Now ſince there is in our Government, as in every one that is well conſtituted there ought to be, great Liberty of Accuſation, that no Man may be encouraged to do Ill through Hopes of Impunity, if by this means a Method be opened for the Blaſting the moſt innocent Man's Honour, and deterring the moſt Honeſt from being his Judges, what remains, but that every Man's Reputation, which is moſt dear unto ſuch as are Good, is held precariouſly, and it will be in the Power of great Men to pervert the Laws, and take away whoſe Life and Eſtate they pleaſe; or at leaſt to faſten Imputations of the moſt deteſted Crimes upon any, whom for ſecret Reaſons they have a mind to defame? The Conſequences of which Scandal, as they are very miſchievous to every Man, ſo in a trading Country in a more eſpecial manner, to all who live by any Vocation of that kind.

The greateſt Part of Trade is driven upon Credit; moſt Men of any conſiderable Employment dealing for much more than they are truly worth: And every Man's Credit depends as well

upon his Behaviour to the Government he lives under, as upon his private Honeſty in his Tranſactions between Man and Man; ſo that the Suſpicion only of his being obnoxious to the Government, is enough to ſet all his Creditors upon his Back, and put a Stop to all his Affairs, perhaps to his utter Ruin. What Expedition and Violence will they all uſe to recover their Debts, when he ſhall be publicly charged with ſuch Crimes, as forfeit Life and Eſtate? Tho' there ſhould not be one Word of the Accuſation true, yet they knowing the Charge, and the ſeeming Proofs in the Court, and the Conſequences of it, and not being acquainted with the Truth, as it appears to the Jury, Self-Intereſt will make his Creditors to draw in their Effects; which no more than a new Contrivance, under Colour of Law, of undoing honeſt Men.

If to prevent any of theſe Miſchiefs, the Jury ſhould diſcover their Fellows and their own Counſel, as the Court by public Examination doth, it would not only be a wilful Breach of their Oath, but a Betraying of the Truſt which the Law has repoſed in them, for the Security of the Subject. For to ſubject the Reaſons of their Verdicts upon Bills to the Cenſure of the Judges, were to diveſt themſelves of the Power which the Law has given them, for moſt important Conſiderations, without Account or Controll; and to intereſt thoſe in it, whom the Law has not in this Caſe truſted, and ſo by Degrees, the Courſe of Juſtice in one of the moſt material

rial Parts may be changed, and a fundamental Security of our Liberty and Property inſenſibly loſt. On the other hand, If for fear of being unworthily reproached as *Ignoramus* Jurymen, obſtinate Fellows that obſtruct Juſtice, and diſſerve the King, the Grand Jury ſhall ſuffer the Judges, or the King's Counſel, to prevail with them to indorſe *Billa vera*, when their Conſciences are not ſatisfied in the Truth of the Accuſation, they act directly againſt their Oaths, oppreſs the Innocent, whom they ought to protect, and, as far as in them lies, ſubject their Country, themſelves and Poſterity, to arbitrary Powers; pervert the Adminiſtration of Juſtice, and overthrow the Government, which is inſtituted for the obtaining of it, and ſubſiſts by it.

This ſeems to be the greateſt Treaſon that can be committed againſt the whole Kingdom, and threatens Ruin unto every Man in private in it. No one can be ſafe againſt authoriſed Malice; and, notwithſtanding the Care of our Anceſtors, Rapine, Murder, and the Worſt of Crimes, may be advanced by the Formality of Verdicts, if Grand Juries be over-awed, or not ſuffered to inquire into the Truth, to the Satisfaction of their Conſciences. Every Man whilſt he lives Innocently, doth, under GOD, place his hopes of Security in the Law, which can give no Protection, if its due Courſe be ſo interrupted, that Frauds cannot be diſcovered: Witneſſes may as well favour Offenders, as give falſe Teſtimony againſt the Guiltleſs, and if they, by hearing

what each other ſaith, are put into a Way of concealing their villainous Deſigns, there can be no legal Revenge of the Crimes already committed. Others by their Impunity will be encouraged to do the like: And every quiet-minded Perſon will be equally expoſed unto private Injuries, and ſuch as may be done unto him, under the Colour of Law. No Man can promiſe unto himſelf any Security for his Life or Goods; and they who do not ſuffer the utmoſt Violences in their own Perſons, may do it in their Children, Friends and neareſt Relations, if he be deprived of the Remedies that the Law ordains, and forced to depend upon the Will of a Judge, who may be (and perhaps we may ſay are) too often corrupted, or ſwayed by their own Paſſions, Intereſts, or the Impulſe of ſuch as are greater than they. This Miſchief is aggravated by a commonly received Opinion, that whoſoever ſpeaks againſt an accuſed Perſon is the King's Witneſs; and the worſt of Men, in their worſt Deſigns, do uſually ſhelter themſelves under that Name; whereas he only is the King's Witneſs, who ſpeaks the Truth, whether it be for or againſt him that is accuſed. As the Power of the King is the Power of the Law, he can have no other Intention than that of the Law, which is to have Juſtice impartially adminiſtered: and as he is the Father of his People, he cannot but incline ever to the gentleſt ſide, unleſs it be poſſible for a Father to delight in the Deſtruction, or deſire to enrich himſelf by the Confiſcation of his Children's

dren's Eſtates. If the moſt wicked Princes have had different Thoughts, they have been obliged to diſſemble them. We know of none worſe than *Nero*; but he was ſo far from acknowledging, that he deſired any Man's Condemnation, that he looked upon the Neceſſity of ſigning Warrants for the Execution of Malefactors, as a Burden, and rather wiſhed he had not learnt to Write, than to be obliged to do it *. They who by ſpreading ſuch barbarous Errors, would create unto the King an Intereſt different from that of his People which he is to preſerve, whilſt they pretend to ſerve him in deſtroying of them, they deprive him of his Honour and Dignity; Juſtice is done in all Places, in the Name of the chief Magiſtrate; it being preſumed, that he doth embrace every one of his Subjects with equal Tenderneſs, until the Guilty are by legal Proofs diſcriminated from the Innocent; and amongſt us the King's Name may be uſed in civil Caſes, as well as Criminal: But it is as impoſſible for him rightly to deſire I ſhould be condemned for killing a Man whom I have not killed, or for a Treaſon that I have not committed, as that my Land ſhould be unjuſtly taken from me by a Judgment in his Bench, or I ſhould be condemned to pay a Debt that I do not owe.

In both Caſes we ſue unto him for Juſtice, and demand it as our Right. We are all concerned in it, publicly, and privately; and the King, as well as all the Officers of Juſtice, are by their ſe-

* Sen. Vit. Ner. *Utinam neſcirem litteras.*

veral Oaths, obliged in their reſpective Capacities to perform it. They are bound to give their Aſſiſtance to find out Offenders; and the King's Attorney is by his Oath to proſecute them, if he be required. And he is not only the King's Servant in ſuch Caſes, but the Nation's; or rather, cannot otherwiſe ſerve the King, than by ſeeing Juſtice done in the Nation.

Whenſoever any Man receives an Injury in his Perſon, Wife, Children, Friends or Goods, the King is injured; inaſmuch as he is by his Office to prevent ſuch Miſchief, and ought to be concerned in the Welfare of every one of his Subjects; but the Parties to whom the Injuries are done, are the immediate Sufferers, and the Proſecution is principally made, that they may be repaired or revenged, and other innocent Perſons ſecured by the Puniſhment of Offenders, in which the King can be no otherwiſe concerned, than as he is to ſee his Office faithfully performed, and his People protected. The King's Suit therefore is in the Behalf of his People; yet the Laws leave unto every Man a Liberty, in caſe of Treaſons, Murders, Rapes, Robberies, *&c.* to ſue in the King's Name, and crave his Aid; or by Way of Appeal, in his own. The ſame Law looks upon Felons, or Traitors, as public Enemies; and by authorizing every one to purſue and apprehend them, teacheth us, that every Man, in his Place, ought to do it. The ſame Act whereby one, or a few are injured, threatens all; and every Man's private Intereſt ſo concurs with

with that of the Public, that all depends upon the exact Preſervation of the Method preſcribed by the Law, for the impartial Inquiſition after ſuſpected Offenders, and moſt tender Care of preſerving ſuch as are innocent. As this cannot poſſibly be effected without ſecret and ſeparate Examinations, the forbidding of them is no leſs than to change the Courſe which is enjoined by Law, confirmed by Cuſtom, and grounded upon Reaſon and Juſtice.

If, on the other Side, any Man believe, that ſuch as in the King's Name proſecute ſuſpected Delinquents, ought only to try how they may bring them to be condemned, he may be pleaſed to conſider, that all ſuch Perſons ought, according unto Law, to produce no Witneſs whom they do not think to be true; no Evidence, which they do not believe good; nor can conceal any thing that may juſtify the Accuſed. No Trick or Artifice can be lawfully uſed to deceive a Grand Jury, or induce them to find or reject a Bill, otherwiſe than as they are led by their own Conſciences.

All Lawyers were antiently ſworn to put no Deceit upon the Courts for their Client's ſake; and there are Statutes ſtill in force to puniſh them if they do it. But there is an eternal Obligation upon ſuch as are of Counſel againſt Perſons accuſed of Crimes, not to uſe ſuch Arts as may bring the Innocent to be condemned; and thereby pervert that, which is not called the Judgment of Man, but of God: becauſe Man

renders it in the Stead and by the Commandment of God. Such Practices do not exalt the Juriſdictions of Tribunals; but infect and pollute them with that innocent Blood, which will be their Overthrow. And leaſt of all can it be called a Service to the King; ſince none could ever ſtand againſt the Cry of it. This is neceſſarily implied in the Attorney General's Oath, to ſerve the King in his Kingly Office, wherein the Law preſumes he can do no Wrong. But the greateſt of all Wrongs, and that which hath been moſt deſtructive unto Thrones, is by Fraud to circumvent and deſtroy the Innocent. This is to turn a legal King into a *Nimrod*, a Hunter of Men. This is not to act the Part of a Father or a Shepherd, who is ready to lay down his Life for his Sheep; but ſuch as the Pſalmiſt complains of, "who eat up the People as if they eat Bread." *Jezebel* did perhaps applaud her own Wit, and think ſhe had done a great Service to the King, by finding out Men of *Belial*, Judges and Witneſſes, to bring *Naboth* to be ſtoned: But that unregarded Blood was as a Canker, or the Plague of Leproſy, in his Throne and Family, which could not be cured but by its Overthrow and Extinction. But if the Attorney General cannot ſerve the King by abuſing Juries, and ſubverting the Innocent, he can as little gain an Advantage to himſelf by falſifying his Oath; by the true Meaning whereof he is to proſecute Juſtice impartially: And the eternal divine Law would annul any Oath or Promiſe that he ſhould have

have taken to the Contrary, even though his Office had obliged him unto it.

The like Obligation lies upon Jurors not to ſuffer themſelves to be deluded, or perſuaded, that the Judges, King's Counſel, or any others can diſpenſe with that Oath, or any Part of it, which they have taken before God unto the whole Nation; nor to think that they can ſwerve from the Rules ſet by the Law without a damnable Breach of it. The Power of releaſing or diſſolving conſcientious Obligations, acknowledged in the Pope, makes a great Part of the *Roman* Superſtition; and that grand Impoſtor could never corrupt Kingdoms and Nations to their Deſtruction, and the Eſtabliſhment of his Tyranny, until he had brought them to believe he could diſpenſe with Oaths, taken by Kings unto their Subjects, and by Subjects to their Kings; nor impoſe ſo extravagant an Error upon either, until he had perſuaded them he was in the Place of God. It is hard to ſay, how the Judges or King's Counſel can have the ſame Power, unleſs it be upon the ſame Title; but we may be ſure they may as well diſpenſe with the whole Oath as any Part of it, and can have no Pretence unto either, unleſs they have the Keys of Heaven and Hell in their keeping: It is in vain to ſay, the King as any other Man may remit the Oath taken unto and for himſelf; he is not a Party for himſelf, but in the behalf of his People, and cannot diſpoſe of their Concernments without their Conſent, which is given only in Parliament.

The King's Counſel ought to remember, they are in criminal Caſes of Counſel unto every Man in the Kingdom. It is no ways referred unto the Direction of the Judges, or unto them, whether that Secrecy enjoined by Law, be profitable unto the King or Kingdom; they muſt take the Law as it is, and render Obedience unto it, until it be altered by the Power that made it. To this End the Judges, by Acts of Parliament, *viz.* 18 *Ed.* 3. *cap.* 8. and 20 *Ed.* 3. *cap.* 1. are ſworn to ſerve the People, "Ye ſhall ſerve our Lord the King "and his People in the Office of Juſtice, *&c.* "Ye ſhall deny to no Man common Right by "the King's Letters, nor no other Man's, nor "for no other Cauſe; and in default thereof in "any Point, they are to forfeit their Bodies, "Lands and Goods." This proves them to be the Peoples Servants as well as the King's.

Further, by the expreſs Words of the Commiſſions of Oyer and Terminer, they are required to "aſſiſt every Man that ſuffers Injury, and make "diligent Inquiſition after all manner of Falſ-"hoods, Deceits, Offences and Wrongs done "to any Man, and thereupon to do Juſtice ac-"cording to the Law:" So that in the whole Proceedings in order unto Trial, and in the Trials themſelves, the Thing principally intended, which ſeveral Perſons are ſeverally in their Capacities obliged to purſue, is, the Diſcovery of Truth: The Witneſſes are to depoſe "the "Truth, the whole Truth, and Nothing but the "Truth:" Thereupon the Counſel for the King

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are to proſecute: The Grand Jury to preſent: And the Petit Jury to try: Theſe are ſeveral Offices, but all to the ſame End. It is not the Priſoner, but the Crime that is to be purſued; this primarily, the Offender but by Conſequence; and therefore ſuch Courſes muſt be taken, as may diſcover that, and not ſuch as may enſnare him: When the Offence is found, the impartial Letter of the Law gives the Doom; and the Judges have no Share in it, but the Pronouncing of it: Till then the Judges are only to preſide, and take Care that every Man elſe, who is employed in this neceſſary Affair, do his Duty according to Law. So that upon reſult of the whole Tranſaction, impartial Juſtice may be done, either to the Acquittal, or Condemnation of the Priſoner.

Hereby it is manifeſt why the Judges are obliged by Oath, to "ſerve the People as well "as the King:" And by Commiſſion, to "ſerve every one that ſuffers Injuries." As they are to ſee that Right be done to the King, and his injured Subjects in diſcovering of the Delinquent; ſo they are to be of Counſel with the Priſoner, whom the Law ſuppoſeth may be ignorant as well as innocent; and therefore has provided, that the Court ſhall be of Counſel for him, and as well inform him of what legal Advantages the Law allows him, as to reſolve any Point of Law when he ſhall propoſe it to them. And it ſeems to be upon the Preſumption of this ſteady Impartiality in the Judges, (thus obliged by all

that

that is held ſacred before God and Man to be unbiaſſed) that the Priſoner hath no Counſel; for if the Court faithfully perform their Duty, the Accuſed can have no Wrong, or Hardſhip, and therefore needs no Adviſer.

Now ſuppoſe a Man perfectly Innocent, and in ſome Meaſure knowing in the Law, ſhould be accuſed of Treaſon or Felony; if the Judges ſhall deny unto the Grand Jury the Liberty of examining any Witneſſes, except in open Court, where nothing ſhall be offered that may help to clear the Priſoner, but every Thing aggravated, that gives Colour for the Accuſation; ſuch Perſons only produced, as the King's Counſel, or the Proſecutors ſhall think fit to call, of whoſe Credit alſo the Jury muſt not inquire, but ſhall be controlled and brow-beaten in aſking Queſtions of ſuch unknown Witneſſes for their own Satisfaction, if they have any Tendency to diſcover the Infamy of theſe Witneſſes, or the Falſhood of their Teſtimony; how can Innocence ſecure any Man from being arraigned?

And if the Oath of the Judges ſhould be as much forgotten in the farther Proceedings upon the Trial, where in Caſes of Treaſon the Priſoner ſhall have all the King's Counſel (commonly not the moſt unlearned) prepared with ſtudied Speeches, and Arguments to make him black and odious, and to ſtrain all his Words, and to alledge them for Inſtances of his Guilt: If then all his private Papers, and Notes to help his Memory in his Plea and Defence, ſhall be taken from

from him by the Goaler, or the Court, and given to his Proſecutors; and all Advice and Aſſiſtance from Counſels or Friends, and his neareſt Relations, ſhall be denied him, and none ſuffered by Word or Writing to inform him of the Indifferency, or Honeſty, or the Partiality, or Malice of the Pannels returned (whom the Law allows him to Challenge or refuſe, either peremptorily or for good Reaſons offered;) ſhould he be thus deprived of all the good Proviſions of the Law for his Safety, to what Frauds, Perjuries, and Subornations is not he, and every Man expoſed, who may be accuſed? What Deceits may there not be put upon Juries? And what Probability is there of finding Security in Innocence? What an admirable Execution would this be of their Commiſſion, to "make diligent Inquiſition after all "manner of Falſhoods, Deceits, Wrongs and "Frauds, and thereupon to do Juſtice according "to Law?" When at the ſame Time, if ſo managed, a Method would be introduced of ruining and deſtroying any Man in the Form of Juſtice. Such Practices would be the higheſt Diſhonour to the King imaginable, whoſe Name is uſed, and ſo far miſrepreſent the Kingly Office, as to make that appear to have been erected to vex and deſtroy the People, which was intended and ordained to help and preſerve them.

The Law ſo far abhors ſuch Proceedings, that it intends, that every Man ſhould be ſtrictly bound to be exactly Juſt, in their ſeveral Employments, relating to the Execution of Juſtice.

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The Serjeant of the King's Counſel, Sir *George Jeffreys*, amongſt the reſt, who proſecute in the King's Name, and are conſulted in the forming Bills of Indictment, and Advice about the Witneſſes, and their Teſtimonies againſt the Accuſed; theſe, if they would remember it, when they are made Serjeants, take an Oath, *Coke*'s 2d Inſtitute, Page 214, "as well and truly to ſerve "the People," whereof the Party accuſed is one, "as the King himſelf; and to miniſter the King's "Matters duly and truly after the Courſe of the "Law to their Cunning;" not to uſe their Cunning and Craft to hide the Truth, and deſtroy the Accuſed if they can.

They are alſo obliged by the Statute of *Weſtm.* 1. *cap.* 29. To put no manner of Deceit or Colluſion upon the King's Court, nor ſecretly to conſent to any ſuch Tricks as may abuſe or beguile the Court, or the Party, be it in Cauſes Civil or Criminal: And it is ordained, that if any of them be convicted of ſuch Practices, he ſhall be impriſoned for a Year, and never be heard to plead again in any Court; and if the miſchievous Conſequence of their Treacheries be great, they are ſubject to farther and greater Puniſhments. Our antient Law Book, called *the Mirror of Juſtice*, *cap.* 2. *ſect.* 4. ſays, "That every Ser-"jeant Pleader is chargeable by his Oath, not "to maintain or defend any Wrong or Falſhood "to his Knowledge, but ſhall leave his Client "when he ſhall perceive the Wrong intended by "him: Alſo that he ſhall not move or proffer "any

" any falſe Teſtimony, nor conſent to any Lies,
" Deceits or Corruptions whatſoever in his Plead-
" ings."

As a farther Security unto the People againſt all Attempts upon their Laws, exemplary Juſtice hath been done, in ſeveral Ages, upon ſuch Judges, and Juſticiaries, as through Corruption, Submiſſion unto unjuſt Commands, or any other ſiniſter Conſideration, have dared to ſwerve from them: The Puniſhments of theſe wicked Men remain upon Record, as Monuments of their Infamy, to be a Terror unto all that ſhall ſucceed them. In the Reign of the *Saxons* the moſt notable Example was given by King *Alfred*, who cauſed above forty Judges to be hanged in a ſhort Space, for ſeveral Wrongs done to the People, as is related in *the Mirror of Juſtice*: Some of them ſuffered for impoſing upon Juries, and forcing them to give Verdicts according to their Will; and one, as it ſeems, had taken the Confidence to examine a Jury, that he might find which of them would ſubmit to his Will, and ſetting aſide him who would not, condemned a Man upon the Verdict of Eleven.

Since the Coming in of the *Normans*, our Parliaments have not been leſs ſevere againſt ſuch Judges as have ſuffered the Courſe of Juſtice to be perverted, or the Rights and Liberties of the People to be invaded: In the Time of *Edward* the firſt, *Anno* 1289, the Parliament finding, that all the Judges, except two, had ſwerved from their Duty, condemned them to ſeveral Puniſh-

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ments according unto their Crimes; as Baniſhment, perpetual Impriſonment, or the Loſs of all their Eſtates *, *&c.* Their particular Offences are ſpecified in a Speech made by the Archbiſhop of *Canterbury* in Parliament. They had broken *Magna Charta*; incited the King againſt his People; violated the Laws, under Pretence of expounding them; and impudently preſumed to prefer their own Counſels to the King, before the Advices of Parliament; as appears by the Speech, *&c.* thereunto annexed.

The like was done in the Time of *Edward* II. when *Hugh de Spencer* was charged for having prevailed with the King to break his Oath to the People, in doing Things againſt the Law by his own Authority.

In *Edward* the Third's Time, Judge *Thorpe* was hanged, for having in the like manner brought the King to break his Oath. And the happy Reign of that great King † affords many Inſtances of the like Nature; among which, the Puniſhment of Sir *Henry Green* and Sir *William Skipwith*, deſerve to be obſerved, and put into an equal Rank with thoſe of his brave and victorious Grandfather.

In *Richard* the Second's Time, eleven of the Judges, forgetting the dreadful Puniſhments of their Predeceſſors ‡, ſubſcribed malicious Indictments, againſt Law; and gave falſe Interpreta-

* *Ex. Chron. Anno* 10 *Ed.* I.

† Daniel's *Hiſtory*, *pag.* 260, 261.

‡ See all the Engliſh Hiſtories of *Walſingham*, *Fabian*, *Speed*, &c. in the eleventh and twenty firſt Years of *Richard* II.

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tions of our antient Laws to the King, thereby to bring many of his moſt eminent and worthieſt Subjects to ſuffer as Traitors at his Will; ſubjected the Authority, and very Being of Parliaments to his abſolute Pleaſure; and made him believe, that all the Laws lay in his own Breaſt. Hereupon Sentence of Death paſſed upon them; and though upon their Repentance, and confeſſing they had been ſwayed by Fear and Threatnings from the King, two only were executed; all the others were for ever baniſhed, as unworthy to enjoy the Benefit of that Law, which they had ſo perfidiouſly and baſely betrayed.

It were an endleſs Work to recite all the Examples of this kind that are to be found in our Hiſtories and Records; but that of *Empſon* and *Dudley* muſt not be omitted: They had craftily contrived to aboliſh Grand Juries, and to draw the Lives and Eſtates of the People into Queſtion, without Indictments by them: and by Surprize, and other wicked Practices, they gained an Act of Parliament for their Countenance. Hereupon falſe Accuſations followed without Number: Oppreſſion and Injuſtice broke forth like a Flood. And to gain the King's Favour, they filled his Coffers. The Indictments againſt them, mentioned in *Anderſon*'s *Reports*, P. 156, 157. are worth reading; whereby they are charged "with Treaſon, for ſubverting the Laws and "Cuſtoms of the Land, in their Proceedings "without Grand Juries; and procuring the "Murmuring and Hatred of the People againſt "the

" the King; to the great Danger of him and " the Kingdom." Nothing could ſatisfy the Kingdom, though the King was dead whom they had flattered and ſerved, but ſuch Juſtice done upon them, and many of their Inſtruments and Officers, as may for ever make the Ears of Judges to tingle.

And it is not to be forgotten, that the Judges in Queen *Elizabeth*'s Time, in the Caſe of *R. Cavendiſh*, in *Anderſon*'s *Reports*, Pag. 152, & 155. " were," as they told the Queen and her Counſellors, " by the Puniſhment of former Judges, " eſpecially of *Empſon* and *Dudley*, deterred from " obeying her illegal Commands." The Queen had ſent ſeveral Letters under her Signet; great Men preſſed them to obey her Patent under the Great Seal; and the Reaſons of their Diſobedience being required; they anſwered, " That the " Queen herſelf, and the Judges alſo, had taken " an Oath to keep the Laws; and if they ſhould " obey her Commands, the Laws would not " warrant them, and they ſhould therein break " their Oath, to the Offence of God and their " Country, and the Commonwealth wherein they " were born. And, ſay they, if we had no Fear " of God, yet the Examples and Puniſhments " of others before us, who did offend the Laws, " do remember, and recal us from the like Of- " fences."

Whoſoever, being in the like Places, may deſign, or be put upon the like Practices, will do well to conſider theſe Examples, and not to think

think that he, who obliquely endeavours to render Grand Juries uſeleſs, is leſs criminal than he that would abſolutely aboliſh them. That which doth not act according to its Inſtitution, is as if it were not in Being. And whoever doth without Prejudice conſider this Matter, will ſee that it is not leſs pernicious to deny Juries the Uſe of thoſe Methods of diſcovering Truth, which the Law hath appointed; and ſo by degrees turn them into a meer Matter of Form, than openly and avowedly to deſtroy them. Surely ſuch a gradual Method of deſtroying our native Right is the moſt dangerous in its Conſequence. The Safety which our Forefathers for many Hundreds of Years enjoyed, under this Part of the Law eſpecially, and have tranſmitted to us, is ſo apparent to the meaneſt Capacity, that whoever ſhall go about to take it away, or give it up, is like to meet with the Fate of *Iſhmael*, to have every Man's Hand againſt him, becauſe his is againſt every Man. Artifices of this Kind will ruin us more ſilently, and ſo with leſs Oppoſition, and yet as certainly as the other more open Oppreſſion. This only is the Difference, that one Way we ſhould be Slaves immediately, and the other inſenſibly: But with this farther Diſadvantage too, that our Slavery would be the more unavoidable, and the faſter riveted upon us, becauſe it would be under Colour of Law, which Practice in Time would obtain.

Few Man at firſt ſee the Danger of little Changes in Fundamentals; and thoſe who deſign them,

them, uſually act with ſo much Craft, as beſides the giving ſpecious Reaſons, they take great Care that the true Reaſon ſhall not appear. Every Deſign therefore of changing the Conſtitution ought to be moſt warily obſerved, and timely oppoſed. Nor is it only the Intereſt of the People, that ſuch Fundamentals ſhould be duly guarded, for whoſe Benefit they were at firſt ſo carefully laid, and whom the Judges are ſworn to ſerve; but of the King too, for whoſe ſake thoſe pretend to act, who would ſubvert them.

Our Kings, as well as Judges, are ſworn to maintain the Laws: They have themſelves in ſeveral Statutes required the Judges, at their Peril, to adminiſter equal Juſtice to every Man, notwithſtanding any Letters or Commands, *&c.* even from themſelves to the Contrary. And when any Failure hath been, the greateſt and moſt powerful of them have ever been the readieſt to give Redreſs. It appears by the Preface to the Statutes of the twentieth of *Edward* the IIId, that the judicial Proceedings had been perverted; that Letters, Writs, and Commands had been ſent from the King and great Men to the Juſtices; and that Perſons belonging to the Court of the King, the Queen, and the Prince of *Wales*, had maintained and abetted Quarrels, *&c.* whereby the Laws had been violated, and many Wrongs done. But the King was ſo far from juſtifying his own Letters, or thoſe illegal Practices, that the Preamble of thoſe Statutes ſaith, they were made for the Relief of the People in

their

their Sufferings by them. That brave King, in the Height of his Glory, and Vigour of his Age, choſe rather to confeſs his Error, than to continue in it; as is evident by his own Words:— "*Edward* by the Grace of God, *&c.* Becauſe "by divers Complaints made unto us, we have "perceived that the Law of the Land, which "we by our Oath are bound to maintain, is the "leſs well kept, and Execution of the ſame diſ- "turbed many times by Maintainances and "Procurements, as well in the Court as the "Country, We, greatly moved of Conſcience "in this Matter, and for this Cauſe, deſiring as "much for the Pleaſure of God, and Eaſe and "Quietneſs of our Subjects, as to ſave our Con- "ſcience, and for to ſave and keep our ſaid "Oath, by the Aſſent, *&c.* enact, That Judges "ſhall do Juſtice, notwithſtanding Writs, Let- "ters, or Commands from himſelf, *&c.* and that "none of the King's Houſe, or belonging to "the King, Queen, or Prince of *Wales*, do "maintain Quarrels, *&c.*"

King *James*, in his Speech to the Judges in the Starchamber, in the Year 1616, told them; "That he had after many Years reſolved to re- "new his Oath, made at his Coronation, con- "cerning Juſtice, and the Promiſe therein con- "tained for maintaining the Law of the Land." And in the next Page ſave one ſays, "I was "ſworn to maintain the Law of the Land, and "therefore had been perjured if I had broken "it: God is my Judge, I never intended it."

And

And his Majeſty that now is, hath made frequent Declarations and Proteſtations, of his being far from all Thoughts of deſigning an Arbitrary Government; and that the Nation might be confident he would rule by Law.

Now if after all this, any Officer of the King's ſhould pretend Inſtructions from his Maſter, to demand ſo material an Alteration of Proceedings, in the higheſt Caſes againſt Law, as are abovementioned; and the Court, (who are required to ſlight and reject the moſt ſolemn Commands under the Great Seal, if contrary to Law) ſhould upon a verbal Intimation allow of ſuch a Demand, and ſo break in upon this Bulwark of our Liberties, which the Law has erected; might it not give too juſt an Occaſion to ſuſpect, that all the legal Securities of our Lives and Properties are unable to protect us? And may not ſuch Fears rob the King of his greateſt Treaſure and Strength, the Peoples Hearts, when they dare not rely upon him in his Kingly Office and Truſt, for Safety and Protection by the Laws? Our Engliſh Hiſtory affords many Inſtances of thoſe that have pretended to ſerve our King in this manner, by undermining the Peoples Rights and Liberties, whoſe Practices have ſometimes proved of fatal Conſequence to the Kings themſelvs, but more frequently ended in their own Deſtruction.

But after all, imagining it could be made out that this Method of private Examination by a Grand Jury, (which, from what has been ſaid before,

b fore, hath appeared to be ſo extremely neceſſary for the public Good, and to every private Man's Security) were inconvenient, or miſchievous, and therefore fit to be changed; yet being ſo eſſential a Part of the Common Law, it is no otherwiſe alterable than by Act of Parliament. We find by Precedents, that the bare Forms of Indictments could not be reformed by the Judges. The Words *Depopulatores agrorum*, *Inſidiatores viarum*, *Vi & Armis*, *Baculis*, *Cultellis*, *Arcubus & Sagittis*, could not be left out but by Advice of the Kingdom in Parliament. A Writ iſſued in the Time of King *Edward* III. giving Power to hear and determine Offences, and all the Juſtices reſolved, (*Coke*'s 4th Inſt. P. 164.) "That they could not lawfully act, having their "Authority by Writ, where they ought to have "had it by Commiſſion: Though it was in the "Form and Words that the legal Commiſſion "ought to be. *John Knivett*, Chief Juſtice, by "Advice of all the Judges, reſolved that the "ſaid Writ was *contra Legem*. And where di-"vers Indictments were before them found a-"gainſt *T. S.* the ſame, and all that was done by "colour of that Writ, was damned."

If in ſuch ſeeming little Things as theſe, and many others that may be inſtanced, the Wiſdom of the Nation hath not thought fit to intruſt the Judges, but reſerved the Conſideration of them to the legiſlative Power; it cannot be imagined, that they ſhould ſubject to the Diſcretion and Pleaſure of the Judges, thoſe important Points

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in the eſtabliſhed Courſe of adminiſtring Juſtice, whereupon depends the Safety of all the Subjects Lives and Fortunes. If Judges will take upon themſelves to alter the conſtant Practice, they muſt either alter the Oath of the Grand Jury, or continue it: If they ſhould alter it, ſo as to make it fail with any ſuch new Method, and thus in Appearance charitably provide that the Grand Jury ſhould not take a mock Oath, or forſwear themſelves; they then make an Incroachment upon the Authority of Parliaments, who only can make new, or change old legal Oaths, and all the Proceedings thereupon would be void.

If they ſhould continue conſtantly to impoſe the ſame Oath, as well when they have Notice from the King, that the Jury ſhall not be bound to keep his Secrets and their own, as when they have none; they muſt aſſume to make the ſame Form of Law to be of Force, and no Force; and the ſame Words to bind the Conſcience, or not bind it, as they will have them: Whereby they would profane the natural Religion of an Oath, and bring a foul Scandal upon Chriſtianity, by trifling in that ſacred Matter worſe than Heathens. And whilſt the Judges find themſelves under the Neceſſity of adminiſtring the Oath unto Grand Juries, and not ſuffer them to obſerve it according to their Conſciences, they would confeſs the Illegality of their own Proceedings, and can never be able to repair the Breaches, by pretending a tacit Implication if the King will; but muſt unavoidably fall under

that

that approved Maxim of our Law, *Maledicta eſt interpretatio quæ corrumpit textum:* It is a curſed Interpretation that diſſolves the Text.

There are two vulgar Errors concerning the Duty of Grand Juries, which, if not removed, will in Time deſtroy all the Benefit we can expect from that Conſtitution, by turning them into a mere Matter of Form, which were deſigned for ſo great Ends. Many have of late thought, and affirmed it for Law, that the Grand Jury is neither to make ſo ſtrict Inquiry into Matters before them, nor to look for ſo clear Evidence of the Crime, as the Petit Jury; but that of their Preſentments, being to paſs a ſecond Examination, they ought to indict upon a ſuperficial Inquiry and bare Probabilities: Whereas ſhould either of theſe Opinions be admitted, the Prejudice to the Subject would be equal to the total laying aſide Grand Juries. There being in Truth no Difference between arraigning without any Preſentment from them at all, and their preſenting upon ſlight Grounds.

For the firſt, that Grand Juries ought not to make ſo ſtrict Inquiry, it were to be wiſhed, that we might know how it comes to paſs, that an Oath ſhould be obligatory upon a Petit Jury, and not unto the Grand; or in what Points they may lawfully, and with good Conſcience, quit that Exactneſs: Whether in relation to the Witneſſes and their Credibility; or the Fact and all its Circumſtances; or the Teſtimony and its Weight; or laſtly, in reference to the Priſoner,

and Probability of his Guilt; and withal, upon what Grounds of Law or Reaſon their Opinion is founded. On the contrary, he that will conſider either the Oath they take, or the Commiſſion, where their Duty is deſcribed, will find in all Points, that there lies an equal Obligation upon them and the Petit Juries.

They ſwear "diligently to Inquire, and true "Preſentment make, *&c.* and to Preſent the "Truth, the whole Truth, and Nothing but the "Truth," *&c.* And in the Commiſſion of Oyer and Terminer, their Duty, with that of the Commiſſioners, is thus deſcribed: "To in-"quire by the Oath of honeſt and lawful Men, "*&c.* by whom the Truth of the Matter may "be beſt known, of all manner of Treaſons, *&c.* "Confederacies, falſe Teſtimonies, *&c.* as alſo "the Acceſſories, *&c.* by whomſoever or how-"ſoever done, perpetrated or committed, by "whom or to whom, how, in what Way, or in "what Manner. And of other Articles and "Circumſtances premiſed, and of any other "Thing or Things howſoever concerning the "ſame." Now for any Man after this to maintain, that Grand Juries are not to inquire, or not carefully, is as much as in plain Terms to ſay, they are bound to act contrary to the Commiſſion, and their Oath: And to affirm that they can diſcharge their Duty according to the Obligations of Law and Conſcience, which they lie under, without a ſtrict Inquiry into Particulars, is to affirm that the End can be obtained without the Means neceſſary to it.

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The Truth is, that Grand Juries have both a larger field for their Inquiry, and are in many Reſpects better capacitated to make a ſtrict one, than the Petit Juries: Theſe laſt are confined as to the Perſon and the Crime, ſpecified in the Indictment; but they are at large obliged to ſearch into the whole Matter, that any ways concerns every Caſe before them, and all the Offences contained in it, all the criminal Circumſtances whatſoever, and into every Thing, howſoever concerning the ſame. They are bound to inquire whether their Informations of ſuſpected Treaſons or Felonies, brought by Accuſers, be made by Conſpiracy, or Subornation; who are the Conſpirators, or falſe Witneſſes: By whom abetted, or maintained; againſt whom, and how many, the Conſpiracy is laid; when, and how, and in what Courſe it was to have been Proſecuted.

But none of theſe moſt intricate Matters (which need the moſt ſtrict and diligent Inquiries) can come under the Cogniſance of the Petit Jury; they can only examine ſo much, as relates to the Credit of thoſe Witneſſes brought to prove the Charge againſt the Parties Indicted; wherein alſo they have neither Power, nor convenient Time to ſend for Perſons, or Papers, if they think them needful, nor to reſolve any Doubts of the Lawfulneſs, and Credibility of the Teſtimonies.

Yet farther, if the Crimes objected are manifeſt, it is then the Grand Jury's Duty to inquire after all the Perſons any ways concerned in them,

and the ſeveral Kinds of Offences, whereof every one ought jointly, or ſeparately to be indicted as they ſhall diſcover them to have been Principals, or Acceſſories, Parties or Privy thereunto, or to have comforted, or knowingly relieved either the Traitors or Felons, or concealed the Offences of others: But the Inquiſition into all theſe Matters, which require all poſſible Strictneſs in ſearching, as being of the higheſt Importance unto the public Juſtice, and Safety, is wholly out of the Power and Truſt of the Petit Juries. The Guilt, or Innocence of the Parties put upon their Trials, and the Evidence thereof given, are the only Objects of their Inquiries. It is not their Work, nor within their Truſt to ſearch into the Guilt, or Crimes of the Parties, whom they Try; they are bound to move within the Circle of the Indictment made by the Grand Jury, who are to appoint, and ſpecify the Offences, for which the Accuſed ſhall be tried by the Petit Jury.

When a Proſecutor ſuggeſts that any Man is Criminal, and ought to be indicted, it belongs to the Grand Jury to hear all the Proof he can offer, and to uſe all other Means they can, whereby they may come to underſtand the Truth of the Suggeſtion, and every Thing or Circumſtance that may concern it; then they are carefully to examine the Nature of the Facts, according unto the Rules of the Common Law, or the expreſs Words of the Statutes, whereby Offences are diſtinguiſhed, and Puniſhments allotted unto each

each of them: It is true, that upon hearing the Party, or his Witneſſes, the Petit Jury may acquit or judge the Facts in the Indictment to be leſs heinous, or malicious, than they were preſented by the Grand Jury, but cannot aggravate them; which being conſidered, it will eaſily appear by the Intent and Nature of the Powers given unto Grand Juries, that they are by their Oaths obliged, and their Inſtitution, ordained to keep all Injuſtice from entering the firſt Gates of our Courts of Judicature, and to ſecure the Innocent not only from Puniſhment, but from all Diſgrace, Vexation, Expence or Danger.

To underſtand our Law clearly herein, the Jurors muſt firſt know the lawful Grounds whereupon they may and ought to indict, and then what truly and juſtly ought to be taken for the Ground of an Indictment. The Principal and moſt certain is the Jurors perſonal Knowledge, by their own Eyes or Ears, of the Crimes whereof they indict: Or ſo many pregnant concurring Circumſtances, as fully convince them of the Guilt of the Accuſed: when theſe are wanting, the Depoſitions of Witneſſes and their Authority, are their beſt Guides in finding Indictments. When ſuch Teſtimonies make the Charge manifeſt and clear to the Jury, they are called Evidence, becauſe they make the Guilt of the Criminal evident, and are like the Light that diſcovers what was not ſeen before: All Witneſſes for that Reaſon are uſually called the Evidence, taking their Name from what they ought to be: Yet

Witneſſes may ſwear directly and poſitively to an Accuſation, and be no Evidence of its Truth to the Jury; ſometimes ſuch Remarks may be made upon the Witneſſes, as well in Relation to their Reputation and Lives, as to the Matter, Manner, and Circumſtance of their Depoſitions, that from thence the Falſhood may appear, or be ſtrongly ſuſpected: It is therefore neceſſary to know what they mean by a probable Cauſe or Evidence, who ſay that our Law requires no more for an Indictment.

Probable, is a Logical Term, relating to ſuch Propoſitions, as have an appearance, but no certainty of Truth, ſhewing rather what is not, than what is, the matter of Syllogiſms: Theſe may be allowed in Rhetorick, which worketh upon the Paſſions, and makes uſe of ſuch Colours as are fit to move them, whether true or falſe; but not in Logick, whoſe Object is Truth; as it principally intends to obviate the Errors that may ariſe from the Credit given unto appearances, by diſtinguiſhing the uncertain from the certain, *veriſimile à vero*, it cannot admit of ſuch Propoſitions as may be falſe as well as true; it being as impoſſible to draw a certain Concluſion from uncertain Premiſes, as to raiſe a ſolid Building upon a tottering or ſinking Foundation. This ought principally to be conſidered in Courts of Juſtice, which are not erected to bring Men into Condemnation, but to find who deſerves to be condemned: and thoſe Rules are to be followed by them, which are leaſt liable to Deception. For this Reaſon

ſon the Counſel of the *Areopagites*, and ſome others of the beſt Judicatures that have been in the World, utterly rejected the uſe of Rhetorick, looking upon the Art of perſuading by uncertain Probabilities, as little differing from that of Deceiving, and directly contrary to their Ends, who by the Knowledge of Truth, deſired to be led into the Doing of Juſtice: But if the Art that made uſe of theſe Probabilities was baniſhed from uncorrupted Tribunals, as a Hindrance unto the Diſcovery of Truth, they that would ground Verdicts totally upon them, declare an open Neglect of it; and as it is ſaid, that *uno abſurdo dato mille ſequuntur*, if Juries were to be guided by Probabilities, the next Queſtion would be concerning the more or leſs Probable, or what degree of Probability is required to perſuade them to find a Bill: This being impoſſible to fix, the whole Proceedings would be brought to depend upon the Fancies of Men; and as nothing is ſo ſlight but it may move them, there is no ſecurity that innocent Perſons may not be brought every Day into Danger and Trouble. By this means certain Miſchiefs will be done, whilſt it is by their own Confeſſion uncertain whether they are any ways deſerved by ſuch as ſuffer them, to the utter overthrow of all Juſtice.

If the word *Probable* be taken in a common, rather than a nice Logical Senſe, it ſignifies no more than likely, or rather more than unlikely: When a Matter is found to be ſo, the Wager is not even, there is Odds upon one ſide, and

this may be a very good Ground, for Betting in a Tennis Court, or at a Horſe Race; but he that would make the Adminiſtration of Juſtice to depend upon ſuch Points, ſeems to put a very ſmall Value upon the Fortunes, Liberties and Reputation of Men, and to forget that thoſe who ſit in Courts of Juſtice have no other Buſineſs there than to preſerve them.

This continues in force, though in a Dialogue between a Barriſter and a Grand Jury Man, publiſhed under the Title of the Grand Jury Man's Oath and Office, it be ſaid, p. 8, and 9. "That "their Work is no more than to preſent Offences "fit for a Trial, and for that Reaſon, give in "only a veriſimilar or probable Charge; and, "others have affirmed, that a far leſs Evidence "will warrant a Grand Jury's Indictment, than "a Petit Jury's Verdict." For nothing can be more oppoſite to the Juſtice of our Laws, than ſuch Opinions: All Laws in doubtful Caſes direct a ſuſpenſion of Judgment, or a Sentence in favour of the accuſed Perſon: But if this were hearkened unto, Grand Juries ſhould upon their Oaths affirm, they judge him Criminal, when the Evidence is upon ſuch uncertain Grounds that they cannot but doubt, whether he is ſo or not.

It cannot be hereupon ſaid, that no Evidence is ſo clear and full, but it may be falſe, and give the Jury occaſion of doubts, ſo as all Criminals muſt eſcape, if no Indictment ought to be found unleſs the Proofs are abſolutely certain, for it is confeſſed that ſuch Caſes are not capable of

of an infallible, Mathematical Demonſtration; but a Jury, that examines all the Witneſſes, that are likely to give any Light concerning the Buſineſs in Queſtion, and all Circumſtances relating to the Fact before them, with the Lives and Credit of thoſe that teſtify it, and of the Perſon accuſed, may and do often find that which in their Conſciences doth fully perſuade them, that the accuſed Perſon is guilty; this is as much as the Law, or their Oath doth require; and ſuch as find Bills, after having made ſuch a Scrutiny, are blameleſs before God and Man, if through the fragility inſeparable from human Nature, they ſhould be led into Error? For they do not ſwear that the Bill is true, but that they in their Conſciences believe that it is ſo; and if they write *Ignoramus* upon the Bill, it is not thereby declared to be falſe, nor the Perſon accuſed acquitted, but the Matter is ſuſpended, until it can be more clearly proved, as in doubtful Caſes it always ought to be.

Our Anceſtors took great Care that ſuſpicious, and probable Cauſes, ſhould not bring any Man's Life, and Eſtate into Danger; for that Reaſon, it was ordained by the Stat. 37. *Ed.* 3. Cap. 18. "That ſuch as made ſuggeſtions to the King, "ſhould find Surety to purſue, and incur the ſame "Pain, that the other ſhould have had if he were "attainted, in Caſe their ſuggeſtion be found "evil; and that then Proceſs of the Law ſhould "be made againſt the Accuſed."

This manner of Proceeding hath its Root on eternal, and univerſal Reaſon: The Law given by God unto his People, *Deut.* 19. allotted the ſame Puniſhment unto a falſe Witneſs, as a Perſon convicted. The beſt diſciplined Nations of the World learned this from the *Hebrews*, and made it their Rule in the Adminiſtration of Juſtice. The *Grecians* generally obſerved it, and the *Romans*, according to their *Lex Talionis*, did not only puniſh Death with Death, but the Intention of committing Murder by falſe Accuſations, with the ſame Severity, as if it had been effected by any other Means. This Law was inviolably obſerved, as long as any thing of Regularity or Equity remained amongſt them; and when thro' the Wickedneſs of ſome of the Emperors, or their Favourites, it came to be overthrown, all Juſtice periſhed with it. A Crew of falſe Informers broke out, to the Deſtruction of the beſt Men, and never ceaſed until they had ruined all the moſt eminent and antient Families: Circumvented the Perſons, that by their Reputation, Wealth, Birth or Virtue, deſerved to be diſtinguiſhed from the common ſort of People, and brought Deſolation upon that victorious City. *Tacitus* complains of this, as the Cauſe of all the Miſchiefs ſuffered in his Time and Country *.

By their Means the moſt ſavage Cruelties were committed under the Name of Law, which thereby became a greater Plague, than formerly Crimes had been: No Remedy could be found,

* *Tacitus Ann.* 3.

when

when thoſe *Delatores*, whom he calls, *genus hominum Publico exitio repertum, & pœnis quidem nunquam ſatis coercitum* *, were invited by Impunity, or Reward: And the miſerable People groaned under this Calamity, until thoſe Inſtruments of Iniquity were by better Princes put to the moſt cruel, though well deſerved Deaths.

The like hath been ſeen in many Places; and the Domeſtick quiet, which now is enjoyed in the principal Parts of *Europe*, proceeds chiefly from this, that every Man knows the ſame Puniſhment is appointed for a falſe Accuſation, and a proved Crime.

It is but a few Years ſince Monſieur *Courboyer*, a Man of Quality in *Brittany*, ſuborned two of the King of *France*'s Guards, to ſwear Treaſonable Deſigns againſt *La Motte*, a *Norman* Gentleman; the Matter being brought to Monſieur *Colbert*, he cauſed the accuſed Perſon and the Witneſſes to be ſecured, until the Fraud was diſcovered by one of them, whereupon he was pardoned, *La Motte* releaſed, *Courboyer* beheaded, and the other falſe Witneſs hanged, by the Sentence of the Parliament of *Paris*. Though this Law ſeems to be grounded upon ſuch Foundation, as forbids us to queſtion the Equity of it, our Anceſtors, (for Reaſons beſt known unto themſelves) thought fit to moderate its Severity, by the Statute of 38. *Ed.* 3. *cap.* 9. yet then it was enacted, and the Law continues in force unto this Day; "that whoſoever made Com-

* *Tacitus Ann.* 4.

"plaints

" plaints to the King, and could not prove them " againſt the Defendant," by the Proceſs of Law limited in former Statutes, which is firſt by a Grand Jury; he " ſhould be impriſoned un- " til he had made Gree to the Party of his Da- " mages, and of the Slander he ſuffered by ſuch " Occaſion, and after ſhall make Fine and Ran- " ſom to the King," which is for the common Damage, that the King and his People ſuffer by ſuch a falſe Accuſation and Defamation of any Subject: And in the 42 *Ed.* 3. *cap.* 3. " To " eſchew the Miſchiefs and Damage done by " falſe Accuſers," it is enacted, that " no Man " be put to anſwer ſuch ſuggeſtions, without " Preſentment before the Juſtices," *i. e.* by the Grand Jury: It cannot ſurely be imagined, that the ſuggeſtions made to the King and his Coun- ſel, had no Probability in them, or that there was no Colour, Cauſe or Reaſon for the King to put the Party to anſwer the Accuſation: but the Grievance and Complaint was, that the People ſuffered certain Damage, and Vexation upon un- true, and at beſt uncertain Accuſations, and that therein the Law was perverted by the King and his Counſel's taking upon them to judge of the Certainty or Truth of them, which of Right belonged to the Grand Jury only, upon whoſe Judgment and Integrity our Law doth wholly rely, for the Indemnity of the Innocent, and the Puniſhment of all ſuch as do unjuſtly moleſt them.

Our

Our Laws have not thought fit ſo abſolutely to depend upon the Oaths of Witneſſes, as to allow, that upon Two, or Ten Mens ſwearing poſitively Treaſon or Felony againſt any Man, before the Juſtices of Peace, or all the Judges, or before the King and his Council, that the Party accuſed, be he either Peer of the Realm, or Commoner, ſhould without farther Inquiry be thereupon arraigned, and put upon his Trial for his Life: Yet none can doubt but there is ſomething of Probability in ſuch Depoſitions; nevertheleſs the Law refers thoſe Matteas unto Grand Juries, and no Man can be brought to Trial, until upon ſuch ſtrict Inquiries, (as is before ſaid) the Indictment be found. The Law is ſo ſtrict in theſe Inquiries, that though the Crime be never ſo notorious, nay, if Treaſon ſhould be confeſſed in Writing under Hand and Seal, before Juſtices of Peace, Secretaries of State, or the King and Council; yet before the Party can be arraigned for it, the Grand Jury muſt Inquire, and be ſatisfied, whether ſuch a Confeſſion be clear and certain: Whether there was no Colluſion therein: Or the Party induced to ſuch Confeſſion by Promiſe of Pardon: Or that ſome pretended Partakers in the Crime may be defamed, or deſtroyed thereby; they muſt inquire, whether the Confeſſion was not extorted by Fear, Threatenings, or Force, and whether the Party was truly *Compos mentis*, of ſound Mind and Reaſon at that Time.

The *Stat.* 5. *Eliz.* cap. 1. declares the antient common Law concerning the Truſt and Duty of Juries;

Juries; and enacts, that none ſhould "be in-"dicted for aſſiſting, aiding, comforting, or "abetting" Criminals in the Treaſons therein made and declared, "unleſs he, or they be "thereof lawfully accuſed by ſuch good and ſuf-"ficient Teſtimony or Proof, as by the Jury, by "whom he ſhall be indicted, ſhall be thought "good, lawful, and ſufficient to prove him, or "them Guilty of the ſaid Offences." Herein is declared, the only true Reaſon of Indictments, *i. e.* the Grand Jury's Judgment that they have ſuch Teſtimonies as they eſteem ſufficient to prove the Party indicted guilty of the Crimes whereof he is accuſed, and whatſoever the Indictment doth contain, they are to preſent no more, or other Crimes, than are proved to their Satisfaction, as upon Oath they declare it is, when they preſent it. This Exactneſs is not only required in the Subſtance of Crimes, but in the Circumſtances, and any Doubtfulneſs or Uncertainty in them makes the Indictment, and all Proceedings upon it by the Petit Jury, to be inſufficient, and void, and holden for none, as appears by the following Caſes.

In *Young*'s Caſe, in the Lord *Coke*'s Reports *Lib.* 4. *Fol.* 40. An Indictment for Murder was declared void for its Incertainty, becauſe the Jury had not laid Certainty, in what Part of the Body the mortal Wound was given, ſaying only, that it was about his Breaſt; the Words were *Unam Plagam mortalem circiter pectus.* In like manner, in *Vaux*'s Caſe, *Coke*'s Rep. *Lib.* 4. *Fol.* 44.

he

he being indicted for poiſoning *Ridley*, the Jury had not plainly and expreſly averred, that *Ridley* drank the Poiſon, though other Words implied it, and thereupon the Indictment was judged inſufficient "for (ſaith the Book) the Matter of an In-" dictment ought to be full, expreſs, and certain, " and ſhall not be maintained by Argument or Im-" plication, for that the Indictment is found by " the Oath of the Neighbourhood." In the ſecond part of *Roll*'s Reports, *p.* 263. *Smith* and *Mall*'s Caſe, the Indictment was quaſhed for Incertainty, becauſe the Jury had averred that *Smith* was either a Servant or Deputy, *Smith exiſtens ſervus ſive Deputatus*, are the Words: It was doubtleſs probably enough proven to the Jury, that he was either a Deputy, or Servant, but becauſe the Indictment did not abſolutely and certainly aver his Condition either of Servant or Deputy, it was declared void: If there be any Defect of Certainty in the Grand Jury's Verdict, no Proof or Evidence to the Petit Jury can ſupply it, ſo it was judged by *Wrote* and *Wig*'s Caſe, *Coke* 4. Rep. *Fol.* 45, 46, 47. It was laid, that *Wrote* was killed at *Shipperton*, but did not aver that *Shipperton* was within the *Verge*, though in Truth it was, and no Averment or Oath to the Petit Jury, could ſupply that ſmall Failure of Certainty to ſupport the Indictment; and the Reaſon is rendered in theſe Words, *viz.* "The Indict-" ment being *Veredictum*, id eſt, *dictum Verita-" tis*, a Verdict, that is, a ſaying of Truth, and " matter of Record, ought to contain the whole " Truth which is requiſite by the Law, for

" when

" when it doth not appear, it is the ſame, as if " it were not, and every material Part of the " Indictment ought to be found upon the Oath " of the Indicters, and cannot be ſupplied by the " Averment of the Party." The Grand Jury's Verdict is the Foundation of all judicial proceeding againſt Capital Offenders (at the King's Suit) if that fail in any Point of Certainty, both Convictions, and Acquittals thereupon, are utterly void, and the Proceedings againſt both may begin again, as if they had never been Tried, as it appears in the Caſe laſt cited, *Fol.* 47.

Now as the Law requires from the Grand Jury, particular, certain, and preciſe Affirmations of Truth, ſo it expects that they ſhould look for the like, and accept of no other from ſuch as bring Accuſations to them. For no Man can certainly affirm that which is uncertainly delivered unto him, or which he doth not firmly believe. The Witneſſes that they receive for good are to depoſe only abſolute Certainties about the Facts committed, that is, what they have ſeen, or heard from the accuſed Parties themſelves, not what others have told them; they are not to be ſuffered to make probable Arguments, and infer from thence the Guilt of the Accuſed; their Depoſitions ought to be poſitive, plain, direct and full: The Crime is to be ſworn without any doubtfulneſs or obſcurity; not in Words qualified, and limited to Belief, Conceptions, or Apprehenſions. This abſolute Certainty required in the Depoſition of the Witneſſes, is one principal Ground

Ground of the Jury's moſt rational Aſſurance of the Truth of their Verdict. The Credit alſo of the Witneſſes ought to be free from all Blemiſh, that good and conſcientious Men may rationally rely upon them in Matters of ſo great Moment as the Blood of a Man. It muſt alſo be certainly evident, that all the Matters which they depoſe, are conſiſtent with each other, and accompanied with ſuch Circumſtances as in their Judgment render it credible. All juſt Indictments muſt be built upon theſe moral Aſſurances, which the Wiſdom of all Nations hath deviſed as the beſt and only Way of deciding Controverſies. Neither can a Grand Juryman, who ſwears to preſent nothing but the Truth, be ſatisfied with leſs.

It is ſcarce credible, that any learned in our Laws ſhould tell a Grand Jury, that a far leſs Evidence will warrant their Indictment, being but an Accuſation, than the Petit Jury ought to have for their Verdict. Both of them do, in like manner, plainly and poſitively affirm upon their Oaths the Truth of the Accuſation; their Verdicts are indeed one and the ſame in Subſtance and Senſe, though not in Words. There is no real Difference between affirming in Writing that an Indictment of Treaſon is true, as is the Practice of Grand Juries, and ſaying that the Party tried thereupon is Guilty of the Treaſon whereof he is indicted, as is the Courſe of Petit Juries. They are both upon their Oaths; they are equally obligatory unto both. The one therefore

fore muſt expect the ſame Proof for their Satisfaction as the other; and as clear Evidence muſt be required for an Indictment as for a Verdict. It is unreaſonable to think that a ſlighter Proof ſhould ſatisfy the Conſciences of the greater Jury, than is requiſite to convince the leſs; and uncharitable to imagine, that thoſe ſhould not be as ſenſible as the others of the ſacred Security they have given by Oath, to do nothing in their Offices but according to Truth.

If there ought to be any Difference in the Proceedings of the Grand and Petit Juries, the greater Exactneſs and Diligence ſeems to be required in the Grand Jury: For as the ſame Work of finding out the Truth, in order to the doing of Juſtice, is allotted unto both, the greateſt Part of the Burden ought to lie upon them that have the beſt Opportunities of performing it. The Invalidity, Weakneſs, or Defects of the Proofs, may be equally evident to either of them; but if there be Deceit in ſtifling true Teſtimonies, or Malice in ſuborning wicked Perſons to bring in ſuch as are falſe, the Grand Jury may moſt eaſily, nay probably only can diſcover it: They are not ſtraitned in Time; they may freely examine in private without Interruption from the Counſel or Court, ſuch Witneſſes as are preſented unto them, or they ſhall think fit to call: They may jointly or ſeverally inquire of their Friends or Acquaintance after the Lives and Reputations of the Witneſſes, or the accuſed Perſons, and all Circumſtances relating unto

unto the Matter in queſtion, and conſult together under the Seal of Secreſy. On the other Side, the Petit Jury being charged with the Priſoner, acts in open Court, under the Awe of the Judges; is ſubject to be diſturbed or interrupted by Counſel; deprived of all Opportunity of conſulting one another until the Evidence be ſummed up; and not ſuffered to eat or drink until they bring in a Verdict. So is it almoſt impoſſible for them, thus limited, to diſcover ſuch evil Practices as may be uſed for or againſt the Priſoner, by Subornation or Perjury to pervert Juſtice. If therefore the Grand Jury be not permitted to perform this Part of their Duty, it is hard to imagine how it ſhould be done at all; and it is much more inconceivable how they can ſatisfy their Conſciences, if they ſo neglect as to find a Bill upon an imperfect Evidence, in the Abſence of the Priſoner, in Expectation that it will be ſupplied at the Bar: It concerns them therefore to remember, that if they proceed upon ſuch Uncertainties, they will certainly give incurable Wounds to their Neighbour's Reputations, in order to the Deſtruction of their Perſons.

Whatever Ground this Doctrine of indicting upon ſlight Proofs may have got in our Days, it is, as we have ſeen, both againſt Law and Reaſon, and contrary to the Practice of former Times. My Lord *Coke*, in his *Comment on Weſtminſter* 2d, tells us, "That in thoſe Days, (and as yet, it ought to be) "Indictments taken in "the

" the Abſence of the Party, were formed upon " plain and direct Proofs, and not upon Pro- " babilities and Inferences." Herein we ſee that the Practice of our Forefathers, and the Opinion of this great and judicious Lawyer, were directly againſt this new Doctrine: And ſome that have carefully looked backward, obſerved, that there are very few Examples of Men acquitted by Petit Juries, becauſe Grand Juries of old were ſo wary in canvaſſing every Thing narrowly, and ſo ſenſible of their Duty in proceeding according unto Truth, upon ſatisfactory Evidence, that few or none were brought unto Trial till their Guilt ſeemed evident.

It is therefore a great Miſtake, to think that the ſecond Juries were inſtituted for the Hearing of fuller Proofs: That was not their Work, but to give an Opportunity to the accuſed Perſons to anſwer for themſelves, and make their Defence; which cannot be thought to ſtrengthen the Evidence, unleſs they be ſuppoſed to play Booty againſt their own Lives. By way of Anſwer, the Priſoner may avoid the Charge: He is permitted to take Exceptions: He may demur or plead to the Indictments in Points of Law. Herein the Judges ought to aſſiſt him; and appoint Counſel, if he deſire it. He may ſhew the Indicters, that is, the Grand Jury, or ſome of them, are not lawful Men, or not lawfully returned by the Sheriff: Embracery or Practice may be proved in the Packing of a Ju-

ry;

ry; a Conſpiracy or Subornation may be diſcovered. Falſhood may be found out in the Witneſſes, by Queſtions about ſome Circumſtances that none could have aſked or imagined, except the Party accuſed. And beſides doing Right to the Indicted in theſe and many other Things, it is the People's Due to have all the Evidence firſt taken in private, to be afterwards made public at the Trial, that the Kingdom may be ſatisfied in the equal Adminiſtration of Juſtice, and that the Judgments againſt Criminals may be of greater Terror, and more uſeful to preſerve the common Peace.

If any object, that this Doctrine would introduce double Trials for every Offence, and all the Delays that accompany them: It may be anſwered, that *Nulla unquam de morte hominis cunctatio longa eſt*, Juv. Sat. "No Delay is to "be eſteemed long, when the Life of a Man is "in Queſtion." The Puniſhment of an Offender, that is a little deferred, may be compenſated by its Severity; but Blood raſhly ſpilt cannot be gathered up; and a Land polluted by it is hardly cleanſed. Wiſe and good Men, in Matters of this Nature, have ever proceeded with extreme Caution, whilſt the *ſwift of Foot* for that Buſineſs are in the Scripture repreſented under an ill Character, and have been often found in their Haſte to draw more Guilt upon themſelves, than what they pretended to chaſtiſe in others. To avoid this Miſchief, in many well poliſhed Kingdoms, ſeveral Courts of Juſtice

are

are inſtituted, who take Cognizance of the ſame Facts, but ſo ſubordinate unto one another, that in Matters of Life, Limb, Liberty, or other important Caſes, there is a Right of Appeal from the Inferior, before which it is firſt brought, to the Superior: Where this is wanting, Means have been found to give Opportunity unto the Judges to reflect upon their own Sentences, that if any thing had been done raſhly, or through Miſtake, it might be corrected: Man, even in his beſt Eſtate, ſeeming to have need of ſome ſuch Helps. *Tiberius Cæſar* was never accuſed of too much Lenity, but when he heard that *Lutorius Priſcus* had been accuſed of Treaſon before the Senate, condemned, and immediately put to Death, *Tam præcipites deprecatus eſt pœnas*, he deſired that ſuch ſudden Puniſhment might for the Future be forborn, and a Law was thereupon made, "That no Decree of the Senate "ſhould in leſs than ten Days be tranſmitted to "the Treaſury," before which Time it could not be executed, *Tacit. Ann.* 3. Matters of this Nature concerning every Man in *England*, it is not to be doubted but our Anceſtors conſidered them; and our Conſtitution neither admitting of ſubordinate Judicatures, from whence Appeals may be made, nor giving Opportunities unto Juries to re-examine their Verdicts after they were given, they could not find a Way more ſuitable unto the Rules of Wiſdom, Juſtice and Mercy, than to appoint two Juries, with equal Care, according unto different Methods, the one

one in private and at Leiſure, the other publicly in the Preſence of the Party, and more ſpeedy, to paſs upon every Man; ſo as none can be condemned unleſs he be thought Guilty by them both. And it cannot be imagined, that ſo little Time as is uſually ſpent in Trials at the Bar, before a Petit Jury, ſhould be allowed unto one that pleads for his Life, or unto them, who are to be ſatisfied in their Conſciences, unleſs it were preſumed, that the Grand Jury had ſo well examined, prepared and digeſted the Matter, that the other may proceed more ſuccinctly, without danger of Error.

Therefore let the Grand Juries faithfully perform their high Truſt, and neither be cheated nor frighted from their Duty: Let them purſue the good old Way, ſince no Innovation can be brought in, that will not turn to the Prejudice of the accuſed Perſons and themſelves. Let them not be deluded with frivolous Arguments, ſo as to invalidate a conſiderable Part of our Law, and render themſelves inſignificant Ciphers, in Expectation that Petit Juries will repair the Faults they commit; ſince that would be no leſs than to ſlight one of the beſt Fences that the Law provides for our Lives and Liberties, and very much to weaken the other.

When a Grand Jury finds a Bill againſt any Perſon, they do all that in them lies to take away his Life, if the Crime be capital; and it is ridiculous for them to pretend they rely upon the Virtue of the Petit Jury, if they ſhew none

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in themſelves. They cannot reaſonably hope the other ſhould be more tender of the Priſoner's Concernments, more exact in doing Juſtice, or more careful in examining the Credit of the Witneſſes, when they have not only neglected their Duty of ſearching into it, but added Strength unto their Teſtimony by finding a Bill upon it.

They cannot poſſibly be exempted from the Blame of Conſenting, at the leaſt, unto the Miſchiefs that may enſue, unleſs they uſe all the honeſt Care that the Law allows to prevent them; nor conſequently avoid the Stain of the Blood that may be ſhed by their Omiſſion, ſince it could not have been, if they had well performed their Part before they found the Indictment, whereby the Party is expoſed to ſo many Diſadvantages, that it is hard for the cleareſt Innocence to defend itſelf againſt them.

But when the one and the other Jury act as they ought, with Courage, Diligence and Impartiality, we ſhall have juſt Reaſon, with the wiſe Lord Chancellor *Forteſcue*, to celebrate that Law that inſtituted them *: To congratulate with our Countrymen the Happineſs we enjoy, whilſt "our Lives lie not at the Mercy of un- "known Witneſſes, hired, poor, uncertain; "whoſe Converſation or Malice we are Stran- "gers to; but Neighbours of Subſtance, of ho- "neſt Report, brought into Court by an hon- "ourable ſworn Officer: Men who know the

* Forteſc. *de Laud. Leg. Ang. cap.* 26.

"Wit-

" Witneſſes, and their Credit, and are to hear
" them and judge of them: That want no Means
" for diſcloſing of Truth; and from whom no-
" thing can be hid, which can fall within the
" Compaſs of human Knowledge."

" AFTER that the King for the ſpace of
" three Years and more, had remained be-
" yond Sea, and returned out of *Gaſcoign* and
" *France* into *England*, he was much vexed and
" diſturbed by the continual Clamour both of
" the Clergy and Laity, deſiring to be relieved
" againſt the Juſtices, and other his Majeſty's
" Miniſters, of ſeveral Oppreſſions and Injuries
" done unto them, contrary to the good Laws
" and Cuſtoms of the Realm; whereupon King
" *Edward*, by his Royal Letters to the ſeveral She-
" riffs of *England*, commanded that in all Coun-
" ties, Cities, and Market Towns, a Procla-
" mation ſhould be made, that all who found
" themſelves aggrieved ſhould repair to *Weſt-*
" *minſter* at the next Parliament, and there ſhew
" their Grievances, where as well the Great as
" the Leſs ſhould receive fit Remedies and ſpeedy
" Juſtice, according as the King was obliged by
" the Bond of his Coronation Oath: And now
" that great Day was come, that Day of judg-
" ing even the Juſtices, and the other Miniſ-
" ters of the King's Council, which by no Col-
" luſion or Reward, no Argument or Art of
" Pleading they could elude or avoid: The
" Clergy therefore and the People being gather-

" ed together, and ſeated in the great Palace of
" *Weſtminſter*, the Archbiſhop of *Canterbury*, a
" Man of eminent Piety, and as it were a Pillar
" of the holy Church and the Kingdom, riſing
" from his Seat, and fetching a profound Sigh,
" ſpoke in this manner: Let this Aſſembly know
" that we are called together concerning the
" great and weighty Affairs of the Kingdom,
" too much alas of late diſturbed, and ſtill out
" of order, unanimouſly, faithfully and effectually
" with our Lord the King to treat and ordain:
" Ye have all heard the grievous Complaints of
" the moſt intolerable Injuries and Oppreſſions, of
" the daily Deſolations committed both on Church
" and State, by this corrupt Counſel of our
" Lord the King, contrary to our great Charters,
" ſo many and ſo often, purchaſed and redeemed,
" granted and confirmed to us by the ſeveral
" Oaths of our Lord the King that now is, and
" of our Lords King *Henry* and *John*, and cor-
" roborated by the dreadful Thundrings of the
" ſentence of Excommunication againſt the In-
" vaders of our common Liberties of *England* in
" our ſaid Charters contained; and when we
" had conceived firm and undoubted hopes,
" that theſe our Liberties would have been faith-
" fully preſerved by all Men, the King, circum-
" vented and ſeduced by the Counſels of evil
" Miniſters, hath not been afraid to violate it by
" infringing them, falſly believing that he could
" for Rewards be abſolved from that Offence,
" which would be the manifeſt Deſtruction of the
" Kingdom.

" There

" There is another Thing alſo that grieves our " Spirits that the Juſtices ſubtilly and malici- " ouſly, by divers Arguments of Covetouſneſs " and intolerable Pride, have the King againſt " his faithful Subjects ſundry ways incited and " provoked, counſelling him contrary to the " good and wholeſome Advice of all the Leige- " men of *England*, and have not bluſhed nor " been afraid, impudently to aſſert and prefer " their own fooliſh Counſels, as if they were " more fit to conſult and preſerve the Common- " wealth, than all the Eſtates of the Kingdom " together aſſembled; ſo that it may be truly " ſaid of them, they are the Men that troubled " the Land, and diſturbed the Nation under " a falſe Colour of Gravity, have the whole " People grievouſly oppreſſed, and under pre- " tence of expounding the antient Laws, have " introduced new, I will not ſay Laws, but, evil " Cuſtoms: ſo that through the Ignorance of " ſome, and partiality of others, who for re- " ward or fear of great Men have been engaged, " there was no Certainty of Law, and they " ſcorned to adminiſter Juſtice to the People, " their deeds are deeds of Wickedneſs, and the " Work of Iniquity is in their Hand, their Feet " make haſte to Evil, and the way of Truth " have they not known: What ſhall I ſay? there " is no Judgment in their Paths.

" How many Free-men of this Land, faith- " ful Subjects of our Lord the King, have like " the meaneſt Slaves of loweſt Condition with-

" out any fault been caſt into Priſon, where " ſome of them by Hunger, Grief, or the Bur- " den of their Chains have expired, they have " alſo extorted at their Pleaſure infinite Sums of " Money for their Ranſoms; the Coffers of ſome, " that they might fill their own, as well from " the Rich as the Poor, they have exhauſted, by " Reaſon whereof they have contracted the irre- " concilable Hatred and dreadful Imprecations " of all Men, as if they had purchaſed and ob- " tained ſuch an incommunicable Privilege, by " their deteſtable *Charter of non Obſtante*, that " they might at their own Luſt be free from all " Laws both Human and Divine.

" Moreover there is another more than ordina- " ry Grievance, which hitherto hath, and in " ſome Meaſure doth ſtill rage among us: All " Things are expoſed to Sale, if not as it were " to Plunder and Theft. Alas! how great Power " hath the Love of Money in the Breaſts of Men? " Hear therefore, O ye Wicked, from my Mouth " the dreadful Decree of Heaven; the Dejection " of your Countenances accuſe you, and like the " Men of *Sodom*, ye have not hidden but pro- " claimed the Sin: Wo be to your Souls, wo " be to them that make Laws, and Writing " write Injuſtice, that they may oppreſs the " Poor in Judgment, and injure the Cauſe of " the Humble, that Widows may become their " Prey, and that they might deſtroy the Orphan: " Wo be to thoſe that build their Houſes in In- " juſtice, and their Tabernacles in Unrighteouſ- " neſs: Wo be to them that covet large Poſ-

" ſeſſions,

" ſeſſions, that break open Houſes, and deſtroy " the Man and his Inheritance: Wo be to ſuch " Judges who are like Wolves in the Evening, " and leave not a Bone till the Morning. The " righteous Judge will bring ſuch Counſellors " to a fooliſh End, and ſuch Judges to Confu- " ſion: Ye ſhall all preſently with a loud Cry, " receive the juſt Sentence of the Land."

" At the hearing of theſe Things all Ears " tingled, and the whole Community lifted up " their Voice, and Mourned, ſaying, Alas! alas " for us! what is become of that *Engliſh Liberty* " which we have ſo often purchaſed, which by " ſo many Conceſſions, ſo many Statutes, ſo " many Oaths, hath been confirmed to us?

" Hereupon ſeveral of the Criminals with- " drew into ſecret Places, being concealed by " their Friends; ſome of them were brought " forth into the midſt of the People, and deſer- " vedly turned out of their Offices; one was " baniſhed the Land, and others were grievouſ- " ly fined, or condemned to perpetual Impri- " ſonment.

" This is confirmed by *Spelman*, *An.* 1290. " All the Juſtices of *England*, ſaith he, were *An.* " 18 *Ed.* 1. apprehended for Corruption, ex- " cept *John Mettingham*, and *Elias Bleckingham*, " whom I name for their Honour, and by Judg- " ment of Parliament condemned, ſome to Im- " priſonment, others to Baniſhment, or Con- " fiſcation of their Eſtates, and none eſcaped " without grievous Fines, and the Loſs of their " Offices.

In order to make this Treatiſe as uſeful as poſſible, a Gentleman of remarkable Integrity and Zeal for the true Intereſt of his Country, has preſented the Editor with the following EXHORTATION.

Gather not my Soul with Sinners, nor my Life with bloody Men,
In whoſe Hands is Miſchief: And their right Hand is full of Bribes. Pſ. xxvi. 9, 10. Old Verſion.
For the Congregation of Hypocrites ſhall be deſolate, and Fire ſhall conſume the Tabernacles of Bribery. Job Chap. xv. 34.

To the Chriſtian and Independent CLERGY, *The* GENTRY, FREEHOLDERS, *and other* ELECTORS *of* MEMBERS *to ſerve in* PARLIAMENT *for* Great Britain.

GENTLEMEN,

UPON your virtue and firmneſs, chiefly depend the Liberties and Happineſs of you and your Poſterity,

If you honeſtly and vigorouſly exert yourſelves upon all future elections of the repreſentative Body

Body of the People of *Great Britain*, you may, by the Bleſſing of God, who has ſo often ſtretched forth his Almighty Arm for the Preſervation of this Land, recover your Country, even from the brink of ruin upon which it ſtands at this melancholy Æra.

But if, on the contrary, ſome of you ſhall be deluded by Bribes, to Elect the ſhameleſs Minions and Slaves of a Miniſtry; and if they who ſhall preſerve their hands clean from Corruption, ſhall neglect to exert themſelves in their ſeveral ſtations, to the utmoſt of their abilities, againſt the choice of ſuch abandoned Tools; you have nothing to expect, but the moſt abject Slavery, Poverty and Oppreſſion. The execrable Creatures, who purchaſe your Votes, may conclude they have a right to Trade in your Lives, Liberties and Properties: But whether they will really think they have that right or no, they will certainly make no ſcruple to ſell you to their Corruptors.——If ever this ſhould be the Caſe, *Britain* will be deprived of all her advantages as an Iſland, as well as of all the Bleſſings of her Conſtitution: For the Miniſtry who ſhall be profligate enough to pack a Houſe of Commons by Bribery and Corruption, and keep the Members of it in Pay and Dependency, muſt have views, quite foreign to the Liberties of the People, and the National Intereſt and Glory: Since an able and virtuous Miniſtry,—Lovers of their Country,—faithful Servants of their Prince,—and zealous and active for the welfare of both, will

have no occaſion to have recourſe to a *packed* and *venal* Houſe of Commons; but will deſpiſe ſuch mean and diſhonourable Acts, or rather Tricks and Shifts of Government, wholly relying on the Aid and Support of a diſintereſted, honeſt, and free choſen Repreſentative of the Kingdom.

But a Miniſtry *Ignorant* and *Weak*, and in all reſpects, except Senſe and Courage, like *Catiline*, Ambitious—Self-intereſted and Self-willed—Vicious, Rapacious and Profuſe, muſt, and will, to ſupport their Power, ſo deſtructive of the Liberties, Honour, and Intereſt, of their Country, be always ready, however oppoſite to the National Proſperity, to humour the *Inclinations*, and indulge the *Paſſions* of their Maſter, which can be done by no means ſo effectually, as by Corrupting you to chooſe for your Repreſentatives, Infamous Tools, who will concur with all their Diabolical Schemes, and rivet the Fetters of *Britons*.

If therefore one part of you ſhall ſuffer yourſelves to be bribed to the Choice of ſuch Men; and if the reſt ſhall be lulled into a blind and fatal ſecurity, and neglect to oppoſe with all their might ſuch a Choice, you will deſerve to be reduced to the moſt intolerable Slavery, Poverty and Oppreſſion.——You will deſerve to ſee the *Bill of Rights*—The *Act of Settlement*—*Habeas Corpus Act*—and even *Magna Charta* explained away, and reduced to meer ſhadows and empty names

names——To ſee the Sweat of your Brows, the Care and Induſtry of your Merchants and Manufacturers, and all the little Money left in the Nation tranſported hence, and conveyed into the Coffers of ſubſidiary Beggars, and laviſhed in a *G——n* Syſtem, to aggrandize, of all the *G——n* El———tes, the laſt, the meaneſt and moſt inſignificant; and which from its Situation and Sterility, muſt for ever ſo continue, the Blood of *Britain* unſhed, and her Treaſures undrained.———To ſee the Trade of this Iſland, without which, you cannot ſubſiſt either as a Nation, or as Individuals, diſtreſſed by heavy and ruinous Duties——*neglected* and *undefended*.——Your *Mediterranean* and *Eaſt India* Trades——Your Plantations and your *American* Colonies, Rights and Poſſeſſions, left an eaſy Prey to *French* Encroachments, Invaſions and Depredations.—To ſee your Properties, ſeized, and your Birthrights violated by the Great and Powerful; your Lives expoſed to falſe Accuſations, and your Perſons to arbitrary Impriſonments, heavy Fines, ſevere Whippings, to Pillories, Gibbets, Chains and Manacles:——To ſee your Judges, before whom you are to ſtand upon Life and Death, and before whom all Caſes concerning Liberty and Property muſt be brought, Venal and Corrupt; the Witneſſes, in all Caſes of Moment to you, ſuborned and perjured; and the Juries, who are to decide your Fate in all Matters touching Life, Liberty and Property; Packed, Bribed and Modelled, to the iniquitous and pernici-

ous Projects, of a weak, overbearing, wicked and deteſtable Miniſtry, alike Enemies to King and People.——To ſee yourſelves loaded with an immenſe Debt, which can never be paid, and oppreſſed by grievous and continually increaſing Taxes, to ſupport *Foreign* Meaſures; to maintain *Powerful* indeed, but *Idle* Fleets, lying *uſeleſs* in their Docks, and if ordered out, improperly ſtationed, and deſtined under the conduct of thoſe, who dare not fight, and know not how to command; and to keep on foot a large and dangerous ſtanding Army: And you will alſo deſerve to ſee under a Miniſtry, Diffident and Diſtruſtful of the Zeal and Devotion of the *Britiſh* Soldiery to their Service, an Army of *Foreigners* eſtabliſhed upon you for ever; *Ruſſians*, —— *Heſſians*, —— *Hanoverians*, —— and what not, to awe you, and cut your Throats if you murmur and complain, to ſeize your Poſſeſſions, when they ſhall be ſtrong enough, and in the mean while to live *Idly* and *Luxuriouſly* upon your Labour and Induſtry, and to Seduce and *Raviſh* your *Wives* and *Daughters*, and if they reſiſt and ſtruggle, to throw them behind Fires and Murder them, and thoſe, who upon their Cries ſhall fly to their Aſſiſtance.

I ſay, you will deſerve to ſee eſtabliſhed upon you for ever, ſuch an Army of *Ruſſians* (ay, and of *Germans* too) who of all the European Nations are eſteemed the moſt Haughty, Inſolent and Immoral, and as great Strangers to Gratitude, Generoſity and Humanity, as an Army of

Germans

Germans in the Bowels of this Country.——You will likewiſe deſerve to fall a Province to *France*, to be Hewers of Wood and Drawers of Water to *French* Slaves, and like them wear wooden Shoes.——Good God! My Countrymen, what a miſerable condition will it be, to be Slaves to Slaves? And if ever this ſhould be the caſe, you have nothing to expect but Popery, which you muſt embrace, and forſake your Religion and the Worſhip of the *True* God, to fall down before *Idols* and *Images* made with Mens Hands, out of Wood and Stone; for which you will be in danger of Damnation, or elſe be burned alive by zealous, furious and implacable Popiſh Prieſts. ——To be betrayed with the Concurrence of R——t R——d A——b——rs of Heaven, into the Hands of Blaſpheming, Rapacious, Malicious, Mercileſs, Vindictive, and Outrageous *Jews*; whoſe abominable Tenets oblige them to Murder and Extirpate All, without diſtinction of Age or Sex, who own the Saviour of Mankind; whilſt the Body of the Clergy look tamely on with mute Tongues and idle Pens. ——You will further deſerve to ſee, during the Approach of theſe dreadful Calamities, all Poſts of Honour and Profit in the State, Civil, Military, Naval, and, I had almoſt ſaid, Eccleſiaſtical, filled up with Buffoons, Flatterers and Paraſites, Pimps, Fidlers, Sodomites, and Catamites, and when the meaſure of your Iniquity ſhall be full, to be, through the juſt Vengeance of an offended God, ſwallowed by an Earthquake, or conſumed

in

in ſtorms of Fire and Brimſtone, like the ſinful inhabitants of *Sodom* and *Gomorrah*.

All the foregoing Evils and Calamities you will certainly deſerve, if upon the Elections of your Repreſentatives to ſerve in Parliament, one part of you ſhall fooliſhly and madly take the Golden Bait of Bribery and Corruption, whilſt the uncorrupt Electors, ſhall almoſt as ſcandalouſly, neglect to oppoſe ſo fatal a Practice.

Let me then firſt apply to you, who are the Poor and Indigent part of the Electors; and let me aſk you, will even you, neceſſitous as you may be, expoſe your Country and yourſelves, to the hazard of ſuch intolerable Miſeries, for ſo inconſiderable a Temptation, as the ſum which may be offered to each of you, for the purchaſe of the Lives, Liberties and Properties, and for the Trade and Glory of your Country?——The Money that may poſſibly be diſtributed amongſt you, upon ſo iniquitous an Occaſion, I dare ſay, will not amount, upon an average, to more than ten Guineas a Man——Will this be an advantage to you? No: It will be a diſadvantage: For there is ſcarce a Man of you, whoſe daily Labour can be eſtimated at leſs than *One Shilling* a Day, which for the working Days will amount in the whole to 15l. 13s.——Six Months at leaſt before a general Election, no Work is done, ſo we will ſay, for 156 Days and a half, ſo many *Shillings* muſt be deducted from the above ſum, the amount of a Year's Labour, which will amount to 7l. 16s. 6d, and while the Money you ſell your

your Votes for laſts, after an Election, through the habit of Idleneſs and Drunkenneſs before, you will ſpend at leaſt, three Months of that half Year in Alehouſes; ſo that we may fairly deduct for that three Months, Ninety Days out of your Labour, which at a *Shilling* each Day will amount to 4l. 10s.——which being added to the above 7l. 16s. 6d, will make your Loſs of Labour in an Election Year amount to 12l. 6s. 6d, which being deducted from 15l. 13s.—which you would have gained by an honeſt Induſtry in the whole Year; there will remain gained by Labour that Year only 3l. 6s. 6d, to which if you add for a Bribe 10l. 10s——Your Gain in the whole Year will be no more than 13l. 16s. 6d, which being deducted from the Gain of a whole Year's honeſt Induſtry, which will, as is ſaid before, be 15l. 13s. ——You will be Loſers upon the whole in an Election Year 1l. 16s. 6d, during three or four Months whereof, while you are ſquandering your Time and Money in Alehouſes, your poor miſerable Wives and Children at home, will go half Naked and half famiſhed.

			l.	*s. d.*
One Year's Labour is 15*l.* 13*s.*	Gained by Labour, only		3	6 6
	Do. By a Bribe ——		10	10 0
	Total Gained — —		13	16 6
	By Balance, being ſo much Loſt by an Election —		1	16 6
		15 13	15	13 0

So

So that inſtead of clearing 10l. 10s. by Bribery, you will be out of Pocket 1l. 16s. 6d, and contribute ſo much towards entailing Slavery, and all the Miſeries I have recited, upon yourſelves, and upon your Poſterity; and thereby become odious in the ſight of your Fellow Subjects and all honeſt Men.

But if what I have ſaid has no effect upon you, for the ſake of your Immortal Souls, look beyond the Grave: O fooliſh Wretches! do you think, that there is no GOD to Judge you, and no Hell to receive you? If you are Chriſtians, you muſt believe that the all juſt Judge of Heaven and Earth, will bring you to Judgment for your Sins; and caſt you into that Hell of Eternal Fire and Brimſtone, the exquiſite Torments whereof are inexpreſſible and inconceivable, and where you will not find one drop of Water to cool your Tongues.——Were you to be aſked this Queſtion,——Do you belive, that you ſhall be damned for Theft, Murder, Adultery or any other Crime? You would certainly anſwer, Yes; and you would anſwer right. Is it then poſſible, you can be ſo egregiouſly ſtupid, as to believe you will not be damned for ſelling your Country! A Crime of ſo extenſively a miſchievous and atrocious Nature, that it far ſurpaſſes in Wickedneſs every other Crime that can be named, Infidelity and Blaſphemy only excepted.——Thruſt each of you but a Finger into the flame of a Candle——Can you hold it there a ſingle Minute? You cannot: If therefore you cannot bear

bear the burn of a Candle upon ſo ſmall a Member, for ſo ſhort a ſpace of Time, how will your Bodies and Souls ſupport to endleſs Ages, the infinitely tranſcending Agonies of the unquenchable Flames of Hell? Think betimes, unhappy Men! And when the vile Corruptor extends his polluted and polluting Hands to ſeduce you from your Honeſty, and to purchaſe your Country's Freedom for his Maſters, and your Bodies and Souls for the Prince of Darkneſs, with Indignation reject the baſe Bribe, and with Scorn ſpit in the Face of the baſe Minion.

As for You, the *Chriſtian* and *Independent Clergy*, the *Independent Gentry* and *Freeholders* of this Country, there can be no doubt of the Integrity of your Hearts, or of your love for your Country. The only Faults, of which you can be ſuſpected, are too great an Inattention to thoſe Matters, which are of a public Nature and general Concern;——of, permit me to ſay, an inexcuſable Indolence and Negligence, in not exerting properly the means placed in your Hands by God, and by the Conſtitution, in oppoſition to ſuch Meaſures as you diſapprove, and think deſtructive to the Liberties, Commerce, Intereſt, and Honour, of this Nation. Give me leave therefore to repreſent to you, and I am confident, when you ſeriouſly reflect upon what I offer, you will concur with me in Sentiments, that a meer ſimple Innocence of Meaſures, ruinous and fatal in Deſign and Conſequence, will never recommend you to the Favour of God, nor induce the

the Bleſſings of Poſterity on your Memories. For God, at that great Day appointed to judge the World, when every Man muſt give an account of his Actions here, and will be reſponſible for the whole Conduct of his Life, for what he has left undone, as well as for what he has done, will not be ſatisfied with a ſimple Innocence, and inactive Virtue. No: He expects an active Virtue, exerciſing itſelf in the conſtant practice of all the Duties both to God and Man, and in a ſtrict Obedience to the poſitive commands of revealed, and the dictates of natural Religion: So that if through Indolence and Negligence you ſuffer wicked Men to ſacrifice the Commerce of *Britain*, which is the ſupport of Millions——To ruin her Naval Power, which is her chief Strength and Defence——To trample upon her Laws, which are the Security of all that is dear and valuable to her Natives—To ſtain her Honour, which is her brighteſt Gem; and to corrupt the Electors of her future Repreſentatives in Parliament, which muſt end in the ſubverſion of all her Laws, Rights and Privileges, and in the deprivation of all her natural Advantages and Bleſſings; I ſay, if through Indolence and Negligence, you ſuffer wicked Men to commit ſuch Crimes, without oppoſing them in your ſeveral Stations, to the utmoſt of your Abilities, by a vigorous Application of thoſe means, which the Goodneſs of God, and the Virtue of your Forefathers have put into your Hands; though you may plead your Innocence,

ſo

ſo far, as not having been partakers of other Mens Sins, by an actual commiſſion of them, yet inſtead of a reward for your Innocence, expect thoſe Puniſhments aſſigned for the Sins of Omiſſion; of Omiſſion of thoſe Duties, by the practice of which, you may preſerve your Country from the inſupportable Miſeries of Servitude.

Awake, Awake, my dear Countrymen, from the Lethargy which benumbs your Senſes, and let me intreat you to oppoſe the Hydra Bribery, the Founder of Slavery and arbitrary Power, with the moſt active Zeal——Let the Chriſtian and Independent Clergy, the Independent Gentry and Freeholders, with all their Friends and Tenants, before all Elections of Members of Parliament, flock in Shoals into the ſeveral Cities and Boroughs in their reſpective Counties; there let them declare the Crime, and ſhew the dreadful Conſequences of Bribery and Corruption to the poor indigent Voters.——Tell them plainly, that whoever takes, or is ſuſpected on good grounds of taking a Bribe for his Vote, ſhall never receive a ſingle Farthing as a Tradeſman or Labourer: Let the Landlords oblige their Tenants to carry no Corn or Cattle to a Borough notorious for Bribery, but carry the Markets to other places——If you cannot perſuade——Starve the Raſcals into Honeſty. And, above all, let the Chriſtian and Independent Clergy, thunder from the Pulpit againſt Corruption, and ſet before their venal Eyes all the Terrors of Hell.

And

And now I will beg a Word or two to the Clergy in general: And let me aſk you, Reverend Paſtors of Chriſt's Flock, a few very plain and free Queſtions.

That Bribery and Corruption are no Strangers in this Country, is very evident, both from the ſeveral Laws made by the Legiſlature to ſuppreſs it, and by the many Petitions that have been preſented to ſeveral Houſes of Commons, complaining of undue Elections and Returns; in moſt of which Bribery and Corruption are Allegations againſt both the Electors and returning Officers.——That many Members have been Ejected thoſe Houſes of Commons, and returning Officers puniſhed upon Proofs of thoſe Allegations; that even ſome Boroughs have been Diſfranchiſed, and others in danger of being ſo, for Bribery and Corruption, and that the firſt Laws made againſt Bribery and Corruption, and to ſecure the freedom of Elections of Parliaments, and of the People, are of no late Date, are notorious Facts, and plainly prove that the Monſter has many Years ſince gained a footing in this Iſland: And if ſo, pray give me leave to aſk you, how it comes to paſs, that you Gentlemen, who bear the Commiſſion of the Almighty King and Lord of the Univerſe, to preach the Goſpel of Chriſt, to inculcate Principles of Religion and Morality, to recommend Virtue, and to diſcourage and decry Wickedneſs and Vice, have all this while, (ſome few excepted) confined your Pulpit Oratory to the leſſer Sins of Men, and have

paſſed

paſſed over this crying Sin in ſilence? The Degrees of Sins are proportioned by the extenſiveneſs of the Injury and Miſchief they bring upon Mankind. Is not Cheating, Theft, Covetouſneſs, Drunkenneſs, Lying, Fornication, Adultery, forbidden by the Laws of God, becauſe they are injurious to Individuals? If therefore, for this Reaſon, for this one at leaſt, theſe Sins are forbidden, can you be ſo ſilly as to believe that Bribery, which exceeds all theſe Crimes, becauſe far more injurious in its Conſequences, is not ſtill more abominable in the Sight of God, whoſe Eyes are purer than to behold Iniquity? Is not the Sin of Bribery and Corruption of the moſt dangerous Tendency to the Lives, Liberties and Properties of the Subject, and to every National Intereſt? Nay, is it not of the moſt dangerous Tendency even to the Chriſtian Religion? Was our bleſſed Saviour never likely to be dethroned in this Province of his univerſal Kingdom? Do not the Precepts of Chriſt and his Apoſtles forbid one Perſon to injure another? Can it then be agreeable to his beneficent Will, that one or a few ſhould injure, nay, deſtroy nine or ten Millions of his Creatures? Why then are you ſo ſilent againſt this flagrant and pernicious Sin? Why do you forbear to *blow the Trumpet in Sion*, to *cry aloud and ſpare not?* Have you no Bowels of Compaſſion? Can you look unconcernedly on, and behold ſo many of your poor unhappy fellow Creatures, the Flocks of your divine Maſter committed to your peculiar and immediate

mediate Care, ſtand, tainted with Bribery and Corruption, upon the Brink of Hell, ready to plunge into a double Portion of Damnation, firſt, for Bribery and Corruption, ſecondly, for Perjury, the Conſequence of that Bribery and Corruption; and not reach out a friendly Hand, to ſave their immortal Souls from everlaſting Perdition? What diſmal Apprehenſions muſt ſieze your Conſciences in the Hour of Death, and what dreadful Confuſion fill your Faces in the Day of Judgment, when you ſhall reflect, too late, that theſe unfortunate Wretches will owe their lamentable Condition, to the Omiſſion of your Duty, in ſo important a Point of your ſacred Function; and perhaps will urge in their Defence at the laſt Day, that Omiſſion, before the impartial and righteous Judge of the World? Can you imagine, and preach to others, that Sins of Omiſſion are Damnable, and yet fail yourſelves in the Diſcharge of your Duty, in a Matter ſo eſſential to the temporal and eternal Welfare of Mankind? Is it conſonant to the Impartiality of the all-righteous God, to convict the Laity and acquit the Clergy for the ſame Offence? Do you conſider, what muſt be the Conſequences to Religion, to Morality, and to Mankind, if you neglect to enforce your Precepts and Doctrines by your own Practice and Examples? To what can we impute it, that we hear ſo little from the Pulpit upon this Subject? Does the Power of the Great intimidate you? Why ſhould it? Will you not preach againſt Bribery and Corruption, with

with the Laws of the Land, as well as the Laws of God on your ſide? The Apoſtles feared nothing in the Diſcharge of their Duty.——Will you ſay, that to explode this Sin, and warn Men againſt it, is a Stumbling-block in the Road to Preferment? The Apoſtles were influenced by no worldly Conſiderations, they only ſought the Glory of God, and your great Maſter, the Oracle of Truth expreſsly tells you, the Service of God and Mammon are incompatible. Is there any Exception of this Branch of your Duty, any private Inſtruction to omit it, in your Commiſſion? If there is, produce it: I believe your Commiſſion is the Bible, I have read the Scriptures, I can find no ſuch Exception, no ſuch Inſtruction there. Can you poſſibly forget the Aſſertion of the *Pſalmiſt*, "Verily there is a Reward for the Righteous, doubtleſs there is a God that judgeth the Earth." If you do remember this, and if you do really believe it, it is ſcarce poſſible but you muſt at the ſame Time believe, that if you riſk the Salvation of your Flocks, by neglecting to warn them againſt this foul and abominable Sin, the Furnace will for you be rendered ſeven times hotter.——God forgive the Clergy.

But I have not yet done, ſomething more if you pleaſe.

Do the Hearts of none of you *Faint* within you, when you read or hear the Exhortation at the Celebration of the Holy Sacrament? *viz.*—— "Dearly beloved Brethren in the Lord, ye that "mind to come to the Holy Communion of "the

" the Body and Blood of our Saviour Chriſt,
" muſt conſider how St. *Paul* exhorteth all Per-
" ſons diligently to try and examine them-
" ſelves before they preſume to eat of that Bread,
" and drink of that Cup: For as the Benefit is
" great, if with a true penitent Heart we receive
" that Holy Sacrament (for then we ſpiritually
" eat the Fleſh of Chriſt, and drink his Blood;
" Then we ſhall dwell in Chriſt, and Chriſt in us
" ſo is the Danger great if we receive the ſame
" unworthily; for then we are guilty of the
" Body and Blood of Chriſt our Saviour, we
" eat and drink our own Damnation, we kindle
" GOD's Wrath againſt us, we provoke him to
" plague us with divers Diſeaſes and ſundry
" Kinds of Death.——Judge therefore your-
" ſelves, Brethren, that you be not judged of
" the Lord. Repent you truly of your paſt
" Sins," (obſerve, Sins in general, Sins of Omiſ-
ſion to be ſure as well as of Commiſſion.—This certainly was the ſenſe of the Church, when this Exhortation was compoſed, and when *eminently Learned* and truly pious Divines wore Mitres and Lawn Sleeves) " have a lively and ſtedfaſt
" Faith in Chriſt our Saviour; amend your
" Lives" (that is, not by forſaking Sins of Commiſſion only, but Sins of Omiſſion likewiſe; by an active Principle, urging us on to the Practice and Diſcharge of all thoſe Offices and Duties, the Performance of which we have neglected and omitted), " and be in perfect Charity with all
" Men" (perfect Charity with all Men, cannot be here

here underſtood in a confined Senſe, limited to a Prohibition of Hatred and Malice, or to any one Breach of Charity; but in the greateſt Latitude, an univerſal Charity, manifeſting itſelf by Love and good Works, and by the Practice of every Virtue; becauſe Mankind muſt be benefited, in ſome Degree, more or leſs, by every inſtance of Love, by every good Work, and by the Practice of every Virtue. To this Benefit the whole human Species, have one common Claim, and an *indefeaſible*, hereditary Right, by the Laws of GOD, of Nature, and of Man, which Right they cannot be deprived of, (without a Violation of all thoſe ſacred Laws.) So ſhall ye "be meet Partakers of thoſe holy Myſteries;" that is, upon the above Conditions.

I need not repeat the reſt of this excellent Exhortation.

If then there is any *one amongſt you*, Gentlemen of the Clergy, who has ſuffered this *egregious* and all-*deſtroying* Sin of Bribery and Corruption, to gain ſuch footing in this Country, as it is univerſally believed to have gained, without exerting all his Faculties to root it up; I ſay,—I do aſk that *unhappy* Man, let his *Rank* in the Church be whatever it will, who has been ſo blameably and inexcuſeably *negligent* in the Diſcharge of his Duty in this particular, whether when he reads or hears, thoſe emphatical and tremendous Words in the above moſt ſolemn and awful Exhortation, his Heart does not *Faint* within him? And I do farther aſk him, if he does *examine* himſelf

ſelf with the great ſtrictneſs therein required; how it is poſſible that ſo vile and fatal a Sin of Omiſſion can lie undiſcovered *rankling* in his Heart? And if he does diſcover it, and yet contents himſelf only with taking the *Mote* out of his *Brother's* Eyes, and leaves this enormous *Beam* of Bribery and Corruption in his *Brother's*, and this as enormous *Beam* of Omiſſion (in not warning him againſt it) in his *own* Eye, I ſay,——I do aſk that *unhappy* Man, whether at that heavenly Feaſt of infinite Grace and Mercy, when thoſe holy Symbols of the Body and Blood of Chriſt our Saviour, paſs his Lips, his *own* Blood does not ſhudder,——His Tongue faulter,——His whole frame tremble, and his Knees knock together? And if he does not *examine* himſelf thoroughly, I do moreover aſk him, whether he can poſſibly be a *meet* Partaker of thoſe holy Myſteries? And alſo if he does not repent and amend, that is, *alter* the whole conduct of his Life, and diligently and faithfully perform all the Duties he owes to God and Man, whether he will, or can poſſibly be a *meet* Partaker of them? ——Whether, under ſuch melancholy Circumſtances, it will not be the higheſt Preſumption in ſuch an one to approach the Lord's Table; and whether he will not, by ſo *unworthy* a Participation of the holy Euchariſt, be "guilty of the Body and Blood of Chriſt our Saviour, and eat and drink his own Damnation, not conſidering the Lord's Body; kindle God's Wrath againſt him,

him, and provoke him (God) to plague him with divers Diſeaſes, and ſundry Kinds of Death?"

Pardon me, Gentlemen, that I deal ſo very plainly with you. It is not from Spleen or Rancour againſt the *Cloth* that it proceeds.——I aſſure you, upon the Word of a Chriſtian, that I moſt highly reſpect and honour the moſt venerable and ſacred Order, who bear the Commiſſion of the Redeemer of the World, to preach Peace and Good-will to Men,---To guide them into the Paths of Religion and Virtue, Sincerity, Honeſty and Truth,——To laſh Immorality and Vice, and pronounce eternal Happineſs to the Juſt, and eternal Miſery to the Wicked.——Theſe are Matters of the higheſt Conſequence to Mankind, and deſerve our moſt ſerious Attention, which cannot be duly given by thoſe who do not duly revere the Order, and the Members of that Order, when they demean themſelves like Chriſtians, as well as *profeſs* themſelves ſuch, and maintain the Dignity of their high and ſacred Office, by a diligent and punctual, pious and zealous Execution of the divine Commiſſion, deſerve the utmoſt Reſpect, and the moſt tender, affectionate, and friendly Treatment: And for my own Part, I can with the ſtricteſt Veracity affirm, that whenever I have had the good Fortune to *ſtumble* upon a truly religious and pious Clergyman, who diſcharges the high truſt committed to him conſcientiouſly, and in the Manner he ought; and who by the general Tenor of his Life, proves himſelf to be a Pleaſer of God

rather than a *Pleaſer* of Men, I do to the utmoſt of my Power behave towards him, ſo, as I have juſt now declared, ſuch worthy Clergymen deſerve to be treated.

And now, Gentlemen, having frankly told you from what my freedom with you does not proceed, I will as frankly tell you from what it does.

It proceeds then, from a moſt compaſſionate Charity for the immortal Souls of thoſe of you who have neglected to warn and reclaim, by every Method you poſſibly could, thoſe *miſerable* Wretches, who are *immerged* in the Sin of Bribery and Corruption, and who are running headlong to Hell and Deſtruction; and bringing, in Conſequence of it, upon this Country, Slavery and every ſpecies of Miſery, that it is poſſible to name or think of.

And it likewiſe proceeds from a moſt ſincere Love to my Country, and a moſt hearty Concern for her *preſent ruinous* Condition: A Condition, which, I wiſh I could with Certainty ſay, does not too much reſemble that of the unhappy *Britons*, who called in the *Germans* to fight their Battles, and defend them from their Enemies the *Picts* and *Scots*; and of whom *Milton* writes, quoting the Authority of *Gildas*, "But Wan-
" tonneſs and Luxury, the wonted Companions
" of Plenty, grew up as faſt, and with them, if
" *Gildas* deſerves belief, all other Vices incident
" to human Corruption. That which he notes
" eſpecially to be the chief *perverting* of all *Good*

" in

" in the Land, and ſo continued in his Days, " was the *hatred* of *Truth*, and all ſuch as *durſt* " appear to *Vindicate* and *Maintain* it. Againſt " them, as againſt the only Diſturbers, all the " *Malice* of the Land was bent. Lies and Fal- " ſities, and *ſuch* as could beſt *invent* them, were " only in requeſt. Evil was *embraced* for Good. " ——Wickedneſs *honoured* and *eſteemed* as Vir- " tue, and this quality *their* Valour had againſt " a foreign Enemy, to be ever *backward* and " heartleſs.———To civil Broils eager and " prompt.——In Matters of Government and " the ſearch of Truth, *Weak* and *Shallow*;—— " In Falſhood and wicked Deeds, *Pregnant* and " Induſtrious.——Pleaſing to GOD or not pleaſ- " ing, with *them* weighed alike; and the *worſt* " moſt an end was the Weightier. All things " were done *contrary* to public Welfare and " Safety, nor only by *ſecular* Men, for the CLER- " GY alſo, whoſe *Examples* ſhould have *guided* " others, were as Vicious and Corrupt. Many " of *them* beſotted with *continual* Drunkenneſs, " or ſwollen with *Pride* and Wilfulneſs, full of " *Contention*, full of *Envy*, Indiſcreet, *incompetent* " Judges to determine what in the Practice of " Life, is Good or Evil, Lawful or Unlawful."

Milton, in another place ſays, citing the ſame Authority, " They avenge, ſaith he, and they " protect, not the Innocent, but the Guilty; " they Swear oft, but perjure; they wage War, " but civil and unjuſt War. They puniſh ri- " gorouſly them that rob by the Highway;

" but thoſe grand Robbers that ſit with them
" at Table, they honour and reward; they give
" Alms largely, but in the Face of their Alms-
" deeds, pile up Wickedneſs to a far higher
" Heap. They ſit in the Seat of Judgment,
" but go ſeldom by the Rule of Right; neglect-
" ing and proudly overlooking the Modeſt and
" Harmleſs; but countenancing the Audaci-
" ous, though guilty of abominable Crimes;
" they ſtuff their Priſons, but with Men com-
" mitted rather by Circumvention, than any juſt
" Cauſe. Nothing better were the Clergy, but
" at the ſame pais or rather worſe, than when
" the *Saxons* came firſt in; unlearned, unappre-
" henſive, yet impudent, ſubtle Prowlers, Paſ-
" tors in Name, but in deed Wolves; intent
" upon all Occaſions, not to feed the Flock, but
" to pamper and well line themſelves. Not
" called, but ſeiſing on the Miniſtry as a Trade,
" not as a ſpiritual Charge: Teaching the Peo-
" ple, not by ſound Doctrine, but by evil Ex-
" ample: Uſurping the Chair of *Peter*, but
" through the Blindneſs of their own worldly
" Luſts, they ſtumble upon the Seat of *Judas:*
" Deadly haters of Truth, broachers of Lies:
" Looking on the poor Chriſtian with Eyes of
" Pride and Contempt; but fawning on the
" wickedeſt rich Men without Shame: Great
" Promoters of other Mens Alms with their ſet
" Exhortations; but themſelves contributing
" ever leaſt; ſlightly touching the many Vices
" of the Age, but preaching without end their

" own

" own Grievances, as done to Chriſt; ſeeking
" after Preferments and Degrees in the Church,
" more than after Heaven; and ſo gained, make it
" their whole ſtudy how to keep them by any Ty-
" ranny. Yet leſt they ſhould be thought things
" of no uſe in their eminent Places, they have
" their Niceties and trivial Points to keep in
" awe the ſuperſtitious Multitude; but in true
" ſaving Knowledge leave them ſtill as Groſs and
" Stupid as themſelves; Bunglers at the Scrip-
" tures, nay forbidding and ſilencing them that
" know; but in worldly Matters, practiſed and
" cunning Shifters; in that only Art and Simo-
" ny, great Clerks and Maſters, bearing their
" Heads high, but their Thoughts abject and
" low. He taxes them alſo as Gluttonous, In-
" continent, and daily Drunkards. And what
" ſhouldſt thou expect from theſe, poor Laity?"
So he goes on; " Theſe Beaſts all Belly: Shall
" theſe amend thee, who are themſelves labori-
" ous in evil Doings? Shalt thou ſee with their
" Eyes, who ſee right forward nothing but
" Gain? Leave them rather, as bids our Savi-
" our, leſt ye fall both blind-fold into the ſame
" Perdition. Are all thus? Perhaps not all, or
" not ſo groſly. But what availed it *Eli* to be
" himſelf blameleſs, while he connived at others
" that were abominable? Who of them hath been
" envied for his better Life? Who of them hath
" hated to conſort with theſe, or withſtood their
" entering the Miniſtry, or endeavoured zea-
" louſly their caſting out? Yet ſome of theſe

" perhaps by others are legended for great Saints. " This was the State of Government, this of Re- " ligion among the *Britons*, in that long calm of " Peace which the Fight at *Badon* Hill had " brought forth."

But to proceed. If this Sin of Omiſſion, in neglecting to warn the People againſt the deteſtable Sin of Bribery and Corruption, and to reclaim them from it, by every poſſible Method, is nothing more than the meer *effect* of Indolence and Forgetfulneſs, it is ſurely of a very highly criminal Nature: But if any of you are drawn into it by *worldly* Motives, the Conſciences of ſuch, I think, muſt ſtand accuſed of the Sin of *Commiſſion*, as well as of *Omiſſion*: For the *Clergyman* that ſuffers himſelf to be ſeduced by Promiſes of a *Court* Living, a Prebend, Canonry, Deanery, or Biſhoprick, or ſuffers himſelf to be *ſeduced* by the *meer* Expectation of, or View towards any of theſe Emoluments (for GOD will judge and puniſh the evil Intentions of Men) into a profound Silence, with reſpect to the crying Sin of Bribery and Corruption; or if upon *ſuch* Motives, he ſhall ſupport a *Corrupt* and *Evil* Miniſtry, by giving his Vote and Intereſt for their *ductile* Tools, at an Election of Members of Parliament, or by any other means; I dare aver, that *that* Clergyman is as *guilty* of Bribery and Corruption as any poor, illiterate, uninformed, uninſtructed Wretch, who ſhall ſell his Vote to a *Miniſterial* Tool at an Election. Therefore, if you have as yet no Regard for the Honour of GOD,

God, and the Purity of the Chriſtian Religion.——If you have no *reſpect* for Decency, no *thirſt* for a good Name.——If, you have remaining in your Breaſts no Concern——No Love for your poor, diſtreſſed native Country——If none of theſe Conſiderations can influence your Hearts, ——Yet——Let the *Jeopardy* of your precious and immortal Souls, and the terrible Puniſhments of another Life, alarm and excite you (whoſe Conſciences accuſe you) to turn to the Lord your God with *humble* and *contrite* Spirits, and to exert yourſelves as becomes the *Diſpenſers* of the Goſpel and *Ambaſſadors* of Chriſt. Be Vigilant and Induſtrious in your ſeveral Pariſhes, eſpecially in the Cities and Boroughs, there "Armed in "Truth and Righteouſneſs," and "putting on "the whole Armour of God," face all the "Powers of Darkneſs;" and ſtand in the Gap between Hell and your deluded Flocks: Let your Pulpits ring and echo with the *Heinouſneſs* of Bribery and Corruption; reveal to the Electors, the Ruin and Miſery in which that deplorable Sin will involve their Country, *themſelves* and their Poſterity; aſſure them, that the moſt exquiſite Torments of Hell, will be the certain Conſequence of their Corruption; and thunder out the moſt dreadful Anathemas againſt the *Corruptor* and the Corrupted. Nor let this ſuffice: Conſtantly viſit from Houſe to Houſe; inforce the Doctrines of the Pulpit, by private Admonitions to each Individual; examine each of them ſtrictly;——Obſerve attentively, what

Impreſſions your Inſtructions leave upon the Minds of the People, and what Progreſs they make in Reformation; and when you find them defective, redouble the Vigour of your Endeavours, for the Salvation of their Souls, and the Preſervation of your Country.

Had *you, Gentlemen*, never been defective in your Duty, in this particular, I am perſuaded this fatal Vice had never arrived at its preſent gigantic Size, which is become a Subject of Lamentation to every good Man in theſe Kingdoms.

In order therefore to excite you to this diligent, and abſolutely neceſſary Diſcharge of your Duty, let me exhort you, let me intreat you to view the *good Things* of this Life in a proper and true Light, and to fix a fair and juſt Value upon *fat* Livings, *fat* Prebends, *fat* Canonries, *fat* Deaneries, and *fatter* Biſhopricks. Eſteem them all as the Permiſſions of God, and the Appointments of the Conſtitution, for the Advancement of Religion and Piety, and for the Rewards of Learning and Merit, and not for the Advancement and Price of *Worldly*-minded Men.——— Reflect within *yourſelves*, that, when you acquire any of theſe Preferments, upon any other Principles than thoſe of Chriſtianity, and by any other Conduct than ſuch as is conſiſtent with her Purity, and conformable to her Precepts, you Crucify the Lord of Life afreſh, and increaſe your own Damnation.

To paſs over what you will hereby ſuffer in your Characters, a Conſideration, which has ever

ever influenced the Minds and Actions of all ſober, wiſe, and thinking Men, who have invariably thought, a good Name a Jewel of ineſtimable Price; I ſhall recommend to your moſt ſerious Conſideration, how *precarious* thoſe temporary Bleſſings are (if ſuch Things can be called Bleſſings, which are obtained by a baſe Servility, by turning Godlineſs into Gain, or any other unchriſtian Means) both in their Acquiſition and Poſſeſſion.

As to the former, how often are Men *baffled* in their Attempts, and diſappointed in their Expectations, though founded in the *Promiſes* of the Great? And as to the latter, you may do well, to remember the ſad Story of the *Sordid* Wretch, mentioned in the Goſpel; who rejoicing and exulting in the multitude of his Stories, reſolved to pull down his Barns and build greater; but was ſtopped ſhort in the full Career of his Avarice and Folly, by the Voice of GOD, pronouncing this juſt and mortifying Sentence upon him; "Thou "Fool! this Night thy Soul ſhall be required of "thee: Then, whoſe ſhall thoſe Things be "which thou haſt provided?" —Read—Mark —Learn—and inwardly Digeſt, and Practice this Twelfth Chapter of St. *Luke*, that *you* be not like this Fool——to whom our Lord compares him, "That layeth up Treaſures for himſelf, "and is not Rich towards GOD."——That you may not, after ſo many miraculous Proofs of the Divine Miſſion of our Saviour, deny him, by *diſobeying* his Precepts and *rejecting* his Counſels,

and in the End be convicted of the Sin of Blaſphemy againſt the Holy Ghoſt which ſhall not be forgiven?

But ſuppoſe God ſhould permit you, to remain in Poſſeſſion of any of theſe Ideal Bleſſings, Twenty, Thirty, Forty, or even Fifty Years, at ſo dear a Purchaſe, as the Loſs of his Favour for ever, and the Loſs of the extatic Joys of Heaven, exchanged for the infinitely exquiſite Anguiſh of thoſe gloomy, ſulphurous and fiery Regions aſſigned for the Wicked, can it be worth *your* whiles?——Think betimes! What is even *fifty* Years (the longeſt Time you can reaſonably expect to keep Poſſeſſion) compared to Eternity?——But were you permitted to hold *London*, *Wincheſter*, *Durham*, *York*, or *Canterbury*, for Myriads of Myriads of Years,—— What are Myriads of Myriads of Years, when compared to the *endleſs* Ages of Eternity?—— Far leſs than a ſingle drop of Water to the vaſt Ocean, or the minuteſt Particle of Matter to the Immense Globe.

Our bleſſed Saviour once ſpeaking to his Diſciples, put theſe two Queſtions to them.

"For what is Man profited, if he gain the "whole World and loſe his own Soul? Or what "ſhall a Man give in exchange for his Soul?" If then the whole World is a Trifle, and no Compenſation to a Man for the Loſs of his Soul, which, I think, is the plain Import of the firſt Queſtion; and if, when caſt into Hell, he would give the whole World, and more if he had it to give,

give, for the exchange of his Soul; that is, to tranſlate it from Hell to Heaven, which, I think, is the plain import of the ſecond Queſtion, What a *meer* Trifle,——What a *cheap* Toy,——What a *fooliſh* Bauble,——What an *empty* Grandeur, ——and what an inconſiderable Price is *London*, *Wincheſter*, *Durham*, *York*, or *Canterbury*, to be put upon the Soul of Man? What a poor Bargain, what a ſilly Contract with Satan this, for the Forfeit of everlaſting Bliſs to the Preſence of God, and to endure the Tortures of Hell to all Eternity? Eternity! Thou dreadful Thought to the habitual, confirmed, hardened and Impenitent Sinner.

Follow therefore, I beſeech you, the wholeſome Counſel of your great and good Maſter, and, "Lay not up for *yourſelves* Treaſures upon Earth, "where Moth and Ruſt do corrupt, and Thieves "break through and ſteal;" But, "Lay up "for yourſelves Treaſures in Heaven, where "neither Moth nor Ruſt doth corrupt, and where "Thieves do not break through and ſteal." For, (ſays our Saviour in the next Verſe) "Where your Treaſure is, there will be your "Heart alſo." And to induce you to do ſo by a faithful and diligent Diſcharge of your Duty, he has given you his infallible Word, that your heavenly Father will give you good Things here, that is, the Neceſſaries and Conveniences of Life, as well as the greateſt Rewards hereafter. Be then, let me requeſt you, ſo *modeſt* as to *believe*, that God is wiſer than the *Wiſeſt* of you, and that

that infinite Wiſdom knows better what is fit for you than *you* yourſelves know; and be ſo wiſe, as to rely upon the infallible Promiſe of God, who, the Apoſtle aſſures you "cannot Lye."

Therefore be vigilant in the paſtoral Office, watch carefully over Chriſt's Fold; leſt "the Devil" (who) "as a roaring Lion walketh about ſeek-"ing whom he may devour," ſhould ſeize the Sheep committed to your Care; and that you may not incur the cenſure of the Prophet *Iſaiah* upon the Lord's *Watchmen* in thoſe Days. "All "ye Beaſts of the Field come to devour, yea, all "ye Beaſts of the Foreſt. His Watchmen are "*blind*, they are all ignorant, they are all *dumb* "*Dogs*, they cannot *Bark*; ſleeping, lying "down, loving to Slumber.——Yea, they are "*greedy Dogs*, which can *never* have enough; "and they are *Shepherds* that cannot underſtand. "They all look to their *own* Way, every one for "*his* Gain, from *his* Quarter.——Come ye, ſay "they, I will fetch Wine, we will fill ourſelves "with *ſtrong Drink*, and to Morrow ſhall be as "this Day, and much more abundant."

I cannot conclude this Exhortation, without paying my Compliments to our *Right Reverend* Fathers in God, in an humble Propoſition or two to their *ſpiritual* Graces and Lordſhips, for the Suppreſſion of this abominable Sin of Bribery and Corruption, and for the Salvation of thoſe poor Wretches, who involve themſelves in the double Guilt of Bribery and Perjury, and for the Advancement of Religion, Morality and good Manners.

ners. And I cannot but flatter myſelf, from *their* Graces and Lordſhips *well known* Piety and holy Zeal for God's Service, and from their *well known* Love of their Country, that what I ſhall offer, will be intirely agreeable to them, and that they will inſtantly and earneſtly carry it into Practice.

Firſt then, my *very good* Lords, I humbly recommend to your Graces and Lordſhips *moſt exemplary* Piety and Zeal, that in each of your reſpective Dioceſes, you will in your ſeveral Viſitation-Charges, demonſtrate to the World, that you do *believe* and *fear* the Lord your God, and that you do love him with all your Hearts, with all your Minds, with all your Souls, and with all your Strength; and that you do truly ſerve him by a moſt active and vigorous Sedulity, in your Endeavours to open the Eyes of the Blind, and Mouths of the *dumb* Watchmen, to inform the *ignorant* Watchmen, and to enlighten (as far as poſſible) the Minds of them, who have no Underſtanding, and to avert the Eyes of ſuch as look to their *own* Way, every one for his Gain, and to ſtrictly enjoin the Watchmen to employ their utmoſt Induſtry in their ſeveral Cures, to deſtroy that hideous Enemy to the ſpiritual and temporal Intereſts of Mankind, Bribery and Corruption; as well as all the leſſer Sins. I preſs this the more, becauſe I never heard, that your Lordſhips have in your Viſitation-Charges, ſo much as touched upon this outrageous Sin. And indeed, my Lords, I cannot forbear thinking, that if your

pious

pious Graces and Lordſhips, will apply your *eminent* Learning, and *aſtoniſhing* Abilities to the Extirpation of this Sin, which as it is ſo abominable in the ſight of Him, "of whom ye ſay, "that He is *your* GOD," and whom your Graces and Lordſhips will, one Day or other, moſt certainly find to be ſo, and in the Sight of all honeſt Men, muſt be alſo very abominable in *your* Sights; the Effects of your pious Labours would be extremely ſalutary and ſucceſsful: Eſpecially as your *ſpiritual* Graces and Lordſhips are in Poſſeſſion of a moſt *powerful* Specific for eccleſiaſtical Blindneſs, Dumbneſs and Ignorance: You have, my Lords, a vaſt number of very plump Benefices in your Diſpoſals. It therefore may not be improper in your Viſitation-Charges, and upon every other Opportunity, to aſſure your Clergy; that Learning, Virtue, ſound Morals, and true Piety, and Vigilance over their reſpective Flocks, ſhall only intitle them to your Graces and LordſhipsFavours in the Diſtribution of them: and that thoſe Clergymen who diſcharge the holy Function beſt, ſhall have the beſt Preferments.

I believe, my Lords, that Man is born with innate Principles of Virtue; and with ſtrong Affections towards, as well as with violent Paſſions that interfere with it; and that whenever Men deviate from the Paths of Virtue, they are generally drawn aſide by ſome falſe deluſory Intereſt or Pleaſure, which ſhocks their Conſciences at the ſame time they indulge their unruly Paſſions:

So

So that if your Graces and Lordſhips will but add the weight of *Intereſt* to your Eloquence, will prefer *none* of the Clergy, but ſuch as ſhall recommend themſelves by their Worth and Merit; and will ſeverely frown upon, wherever you find him, the Hypocrite, the *Time-ſerver*, the *miniſterial* Minion and Immoral Man; I am perſuaded, we ſhall ſoon with Pleaſure behold a great Progreſs in the Reformation of Manners in this Nation, and particularly, be delivered from the mercileſs Jaws of that Monſter, Bribery and Corruption.

And I think it muſt have very happy effects, if to this conduct towards your Clergy, your Graces and Lordſhips will ſeriouſly adviſe them, eſpecially upon all future Elections, to act upon Diſintereſted, and truly *Engliſh* Principles; and to be influenced in giving their Votes and Intereſts for Members of Parliament, by no Hopes, no Promiſes, no Conſiderations, but what tend to the Glory of God and the Good of their Country; and to give their Votes and Intereſts for Gentlemen of the greateſt Integrity and Ability; and ſtrenuouſly to oppoſe the *Beaſts* of the Field, and the *Beaſts* of the Foreſt; that is, all corrupt, profligate and wicked Men, who will buy the Electors, in order to carry them, and this whole Nation with them to Market, and there ſell them all for Slaves. Such a paſtoral Care in the Fathers of the Church of *England*, would equally tend to the Security of LIBERTY, the Encouragement

ragement of COMMERCE, the Proſperity of BRITAIN, and the Promotion of RELIGION, MORALITY and PIETY.

I have now done with your Graces and Lordſhips Viſitations, and what might prove uſeful in them. I ſhall, ſecondly, beg your Graces and Lordſhips Permiſſions to make you an humble Propoſal much for your Graces and Lordſhips Honours, and very conducive to your Health and Pleaſure.

And Firſt, for the two laſt of theſe: Exerciſe my *very good* Lords, is allowed by the Phyſicians to be extremely conducive to Health, and long Life; and almoſt every one agrees that *travelling* is extremely pleaſant; and although it may be ſomething expenſive to your Graces and Lordſhips, yet whatever Expences you may be at upon this Account, you will doubtleſs ſave in Phyſicians Fees and Apothecaries Bills.

And then for your Graces and Lordſhips Honours, I humbly propoſe, that, as the Judges, twice every Year divide themſelves into Circuits, all over *England*, to diſtribute Juſtice, and inforce the Laws of the Land; ſo your Graces and Lordſhips would alſo divide yourſelves into like Circuits, twice at leaſt every Year, to diſtribute Chriſtianity and inforce the Laws of God: and in theſe Circuits to Viſit (at leaſt two of you together) every Pariſh in the Kingdom in its turn: And if all the Pariſhes cannot be Viſited in one Year, let thoſe which ſhall not have been *bleſſed* with the *Light* of your Graces and Lordſhips Coun-

Countenances, enjoy that Bleſſing in the ſubſequent Year or Years, as expeditiouſly as the Nature of the Thing will admit of.

In theſe Annual Viſitations your Graces and Lordſhips may ſend for the Miniſter of each Pariſh, and examine him firſt; as to his behaviour and conduct in his Pariſh; and inquire what Progreſs he has made in the Reformation of his Pariſhioners, and particularly with reſpect to this crying and deſtructive Sin of Bribery and Corruption. Your *Holineſſes* may then call the People to the Church, where, in your epiſcopal Robes, and with your Mitres upon your *ſacred* Heads, which will add Solemnity to your Proceedings, and infuſe Veneration and Awe into the Minds of the common People, give them from your own *pious* Lips, the ſame ghoſtly Advice, which I have already recommended to the inferior Clergy to give them.

Should your *Right Reverences* put this Propoſal immediately into Practice, I am confident, that by the next general Election, there will be ſcarce a footſtep of that Monſter Bribery and Corruption to be traced in this Land. Chriſtianity would revive, Virtue and Liberty would once more rear their venerable and drooping Heads, and flouriſh in a new Youth.—Infidelity, Vice and Slavery would fly before them; Almighty God would ſhower down his choiceſt Bleſſings upon the righteous People, and upon your Graces and Lordſhips his *faithful Watchmen*, by whoſe aſſiduous Labours, ſo many Thouſands of his Creatures

tures will be reſcued from the Snares of Satan, and everlaſting Perdition: By ſuch a glorious Zeal for the Honour of GOD, the Welfare of your Country, and the Felicity of your fellow Subjects and your fellow Creatures, your Graces and Lordſhips would immortalize your own *great* Names, and elevate the Reputation of the Church of *England* to the Stars of Heaven; and when GOD ſhall ſend his pale Meſſenger, Death, my Lords, (for your Graces and Lordſhips, muſt Die, like other Men, and return to the Duſt from whence you came,) ſhall pluck your Mitres from your *ſacred* Heads, your merciful Redeemer ſhall adorn you with celeſtial Crowns.

Think not, my Lords, that I propoſe to you a very arduous and unreaſonable Taſk. I propoſe nothing but what is eaſy and practicable; and what your Lordſhips know the Judges perform every Year.——They, my Lords, are not *younger*, nor *better able* to bear Fatigue than your Graces and Lordſhips; nor are thoſe really uſeful Officers of the State better paid, and for the Generality not near ſo well, for the very great Trouble and laborious Duty of their Office, as your Graces and Lordſhips are, for the *little* Trouble and Labour annexed by the Conſtitution of *England* (I don't ſay by the Law of GOD) to the Epiſcopal: So that in reſpect to the Duty of that Office, your Lordſhips muſt acknowledge that our Saviour's "Yoke is Eaſy and his Bur-"den Light." It would extend theſe Sheets too much, to draw a Parallel between the Labour of

of a venerable Judge and an *holy* Prelate—— Or I could draw a very ſtriking one. I ſhall therefore only compare the Salaries of the Judges with the Revenues of the Biſhops. A Puiſny Judge, my Lords, receives no more than 1500l. *per Annum*; the three Chiefs from 2500l. to 4000l. *per Annum*. I am informed that the Incomes of the pooreſt Sees, by the help of Commendams, are advanced to 1500l. *per Annum*, which is to the full as much as the Salary of the Laborious, Pains-taking, and uſeful Puiſney Judge: And 'tis well known that many Sees produce from 2000——to 6——or 8000l. *per Annum* (viz.) *Ely*, *Exeter*, *Cheſter*, *Saliſbury*, *Worceſter*, *London*, *Wincheſter*, *Durham*, *York*, and *Canterbury*, and perhaps ſome others.——I ſay not this from a Principle of Envy, but only to convince your Graces and Lordſhips, that though you ſhould take upon you the *additional* Duty I have taken the Freedom to propoſe; and which, though it will not be more cumberſome, than the ſimilar Duty of a Judge; yet you will be as *well* requited, and many of you much *better* than thoſe neceſſary Officers of the State. Indeed, my Lords, I am ſo far from *envying* you, or *begrudging* you your Revenus, that I ſhould rejoice to ſee thoſe of all the Biſhopricks *raiſed* to an equality, and not of leſs value than 500l. *per Annum more* than *Canterbury*, which, with *York*, I would have kept at their preſent Value; becauſe I think this would effectually *prevent* Tranſlations: which in *future* Times may be productive

of

of much Evil both to Religion and Liberty, if *great Men* at the Helm, ſhould *hereafter* think it proper to fortify themſelves by the Acquiſition of a Dead Weight; and for ſuch purpoſe ſhould place in the ſeveral Sees, Men biaſſed by *Avarice* and *Pride*, inſtead of thoſe who ſhall be endowed with the excellent Qualities recommended by St. *Paul* in the firſt Epiſtle to *Timothy*, Chapter iii. where the Apoſtle ſhews both what a Biſhop ought to be, and what he ought not to be. In the ſecond Verſe he ſays, "A Biſhop muſt be "blameleſs, the Huſband of one Wife, Vigi-"lant, Sober, of good Behaviour, given to "Hoſpitality, apt to Teach." In Verſe 3. he ſays, amongſt other Things, "that he muſt not "be *Greedy* of filthy Lucre, not Covetous." And that a Biſhop muſt not be *proud*, he clearly expreſſes in Verſe 6: where he ſays, "Not a No-"vice, leſt being *lifted up* with Pride, he fall "into the Condemnation of the Devil." If your Graces and Lordſhips ſhould wonder why I would *raiſe* the Revenues of all the Sees to a *greater* Value than thoſe of Archbiſhopricks; I anſwer, that as Avarice and Ambition are predominant Paſſions in the Heart of Man, it is poſſible, that after Avarice has been well crammed, if ſome check be not given to Ambition, this Fiend might break looſe, and allure thoſe *holy Men*, who ſhall in Time *ſucceed* your Graces and Lordſhips, from their Duty to GOD and their Country, ſo that I think it abſolutely Neceſſary to leave Avarice at Liberty, to combat Ambi-

tion;

tion; that the great End of *advancing* the Incomes of the Biſhopricks may not be defeated.

Having, my *very good* Lords, plainly, I hope, ſhewn, that the Propoſal I have made to your Graces and Lordſhips, to go Circuits all over *England*, is abſolutely Neceſſary under the preſent general Degeneracy and Depravity of the People; that it would highly conduce to the Glory of God, the Salvation of Souls, the Preſervation of your Country, and Advancement of your own Honours; and alſo that it would greatly contribute both to your Health and Pleaſure; and having likewiſe plainly ſhewn, that it is both reaſonable and practicable, and nothing more than what the Judges conſtantly do; and notwithſtanding this additional, and I will ſay, incumbent and indiſpenſible Duty upon your Graces and Lordſhips, you will, after all, be as well, and for the moſt part *better* paid for your Labours in the Goſpel, than thoſe venerable and uſeful Sages are, for their Labours in the Law; I ſhall, therefore, in the next place endeavour to rouze, and animate your *pious* Right Reverences, by ſetting before you, the brighteſt, and moſt illuſtrious Patterns, that ever appeared upon Earth: And by conſtant and careful copying of which, your Graces and Lordſhips will, as far as the frailty of human Nature will permit, raiſe yourſelves to that ſublime Perfection, recommended by our Saviour, when he ſaid, "Be ye therefore perfect, even as your Father which is in Heaven is perfect."

Conſider

Conſider therefore, I beſeech your Graces and Lordſhips, how much *happier* your Condition is in this World, than was the Condition of the holy Apoſtles; or than that of even the Son of God himſelf.———The Apoſtles, my *very excellent* Lords, were extremely poor and neceſſitous Men, yet, they were never ſolicitous to "lay "up for themſelves *Treaſures* upon Earth," they were only ambitious, by a moſt *Faithful*, *Diligent*, *Laborious*, and *Dangerous* diſcharge of their Duty in their miniſterial Callings, to lay up for themſelves Treaſures, and to ſecure an Intereſt, durable as Eternity, in HEAVEN——In "Hea-"ven, my Lords, were their Treaſures, and "therefore, were their Hearts there alſo."—— They, my Lords, to preach the Goſpel of Chriſt, traverſed the Earth on *Foot*, even to the End of it, "Caſting all their Care upon GOD," who they *believed* and *knew* "Cared for them," and ſubſiſting themſelves by the *Charity* of the primitive Chriſtians, and expoſing themſelves continually to the bittereſt Perſecutions, either the Malice of JEWS or Heathens could deviſe:—— To Reproaches,——Impriſonments,——Whippings——Stonings, and at laſt finiſhing their glorious Courſes under the moſt barbarous—— painful, and exquiſite Torments, that either the Fury of mercileſs Tyrants on Earth, or the Rage of infernal Spirits could contrive for Man on this ſide the Grave.——Your Graces and Lordſhips *cannot*, I am ſure, *complain* of Poverty, your Purſes are *very* Deep, and *very well* filled;——

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The Duty of your Office is not extended to the Ends of the Earth, but limited to the *ſmall* Region of *England*, where, *ſmall* as it is, your Graces and Lordſhips are under no neceſſity to *tramp* on Foot, but have your Coaches and Four, and Coaches and Six, attended with *noble* Retinues, to convey you to every part of the Kingdom: Nor are your Graces and Lordſhips expoſed, like the poor Apoſtles, to bitter Perſecutions and moſt cruel Deaths——But to lead your Graces and Lordſhips Attention to a far brighter, and more glorious Pattern, permit me to remind you of the mean Condition to which the SON OF GOD ſtooped: The Place of his Nativity, *my great* Lords, was a Stable, and his firſt Cradle a MANGER; his divine Feet carried him over all *Judea*, doing Good, (mind that my Lords, doing Good) and "though the Foxes have Holes, "and the Birds of the Air have Neſts, the Son "of Man had not where to lay his Head:" And, according to ſome, was forced to work at *Joſeph*'s Trade for his daily Bread.———How different then are your Conditions, my *great*, *magnificent*, and *happy* Lords!——Your Graces and Lordſhips inhabit *ſtately* Palaces, *richly* Furniſhed, wherein you ſleep on *Soft* Beds of Down, and like *wealthy Dives*, fare *ſumptuouſly* every Day. ——God grant that your Graces and Lordſhips latter Ends may not be like his alſo!——It is therefore *impoſſible* that when your Graces and Lordſhips compare your *happy*, very *happy* Conditions in this World, to the poor, mean, diſtreſſed,

treſſed, wretched and forlorn Condition of the SON OF GOD, and the holy Apoſtles; but your *tender* and *devout* Hearts muſt Swell high, and overflow, with the *nobleſt* ſentiments of Gratitude, to the Fountain of all Goodneſs.——— It is impoſſible, I ſay, my Lords, that when you reflect upon their Indigency, and their neceſſitous Circumſtances,——upon their wide, diſtant, laborious and fatiguing Travels, ſeldom or never lightened by any *conveniency* of Beaſt or Vehicle, and when, my Lords, you reflect upon *your own* vaſt Pomp, and abundant Plenty, upon your *great Conveniencies* and fine Accommodations for Travelling over this little Spot of the Globe; and upon the perfect Peace and Security you enjoy in your eaſy Labours for the Glory of GOD, and Salvation of Man, and compare theſe great Advantages and Bleſſings, to the indigent and neceſſitous Circumſtances of the SON OF GOD, and the holy Apoſtles, and to the dreadful Dangers they were expoſed to, and to the bitter Sufferings and terrible Deaths they underwent. It is ſurely impoſſible, that your Graces and Lordſhips can think, that you can ever do *too much*, in return to that infinitely gracious GOD, who has done ſo much for you, or that you can think, the *eaſy* Taſk I have recommended to you, is *too hard* to undertake, for the great and noble Ends propoſed by it; the Suppreſſion of Atheiſm, Deiſm, of Bribery and Corruption; and all that numerous Train of Vices which has overflowed the Land, and deſtroyed that plentiful Crop of Virtue,

Virtue, which naturally ſprings up, and flouriſhes in the fertile Soil of Chriſtianity.

Permit me, my *very pious* Lords, to mention one more particular Advantage which will accrue to Religion, from theſe anniverſary Circuits.

Humility, my Lords, is one of the eminent Branches of Chriſtianity, and next to Faith, Love and Charity, is the moſt beautiful Feature in her lovely Face. Now, my very *humble Lords*, no Virtue appears ſo bright, amiable and affecting, as when dreſſed, in the Practice and Examples of the *beſt* Men and *greateſt* Perſonages. If ſo, it is a great part of a Divine's Duty to diſplay and exhibit the Virtues arrayed in the ſhining Practice and Examples of our bleſſed Saviour and the holy Apoſtles; that being thus adorned and ſet off in the cleareſt, brighteſt, moſt amiable and affecting Manner, they may appear with the greateſt Advantages to Mankind——And if this be ſo, my Lords, I can ſee no Method, by which the fair Virtue of Humility, ſo ſtrictly enjoined by the Son of God, and the Apoſtles, and ſo ſtrongly recommended by their Practice and Examples, can be ſet in ſo clear and ſtrong a Light, or appear to ſo great Advantage, as when it ſhall be viewed by all, in the ſtrong Contraſt of your Graces and Lordſhips *great Equipages*, and all the reſt of your outward Pomp, State and Magnificence.

My Lords, I humbly crave your Graces and Lordſhips pardon, for thinking to employ ſo

much of your Time as the Reading of theſe Sheets will engage; eſpecially as your *precious* Hours are *continually* employed in the Exerciſe of *Praiſe* and *Thankſgiving*, and the Diſcharge of other religious Duties: But if I did not really believe, that ſome new, active and very vigorous Application to the Minds of a deluded, corrupt and wicked Generation, was not abſolutely neceſſary, to reſtore them to their right Senſes, and to reduce them to the Paths of Religion, Virtue and Honeſty; I ſhould have ſpared your Graces and Lordſhips, and all thoſe to whom this Exhortation is particularly addreſſed, the Trouble of peruſing it: Beſides my Lords, I might have *incurred* your Graces and Lordſhips *diſpleaſure*, and have been *too juſtly* cenſured by you for a very *unchriſtian* Partiality; in beſtowing ſo much Pains for the precious and immortal Souls of the *inferior* Clergy, without expreſſing the leaſt Concern, for the ſame precious and immortal Part of your GRACES and LORDSHIPS.

But to return to thoſe, to whom theſe Sheets are particularly addreſſed.

GENTLEMEN,

It is now no time for the Indulgence of Atheiſm, Deiſm, Bribery and Corruption, and every other kind of Vice. The Stores of Deſtruction are opened in Heaven:——The Hour of Vengeance is arrived:——Clouds of deſtroying Thunder blacken thick over our impious Heads:——They have already burſt over AMERICA;——How ſoon the Storm may ſweep away that valuable Branch of our Commerce, that nurſing

nurſing Mother of our gallant Seamen, and ſupport of our naval Strength and Glory, God only knows: I fear very ſoon. As the French have lately made themſelves maſter of Corsica, they may very ſoon burſt once again over Minorca.——Minorca, the Safeguard of our Mediterranean Trade, that is to ſay, of our *Spaniſh*, *Italian* and *Turkey* Trades, and, as I think I can clearly ſhew, of every Branch of our Trade;——Minorca, the Acquiſition of the *Britiſh* Arms, under a great, wiſe, juſt, good and generous Princess; who felt tenderly for her Subjects, engaged in no Meaſures, but ſuch as ſhe really judged were conducive to the Intereſt and Honour of her Kingdoms; who maintained the Honour of the *Britiſh* Flag, and the Dominion of the Seas, and made the proud, perfidious *Gaul*, fly before her victorious Arms, and tremble at her great Name,——Minorca, that bright Jewel in the Crown of *Britain*, may adorn the Crown of *France*, our antient inveterate Enemy, and ſparkle on the Head of *Lewis*——Will then be no more the Poſſeſſion of *Britain*.——But to return. The Clouds have I ſaid, already burſt over *America*, and may probably over *Minorca*.——Both of which, are in imminent Danger.——Which if loſt——I fear——forever;——with it the Trade of this Nation.——What other terrible Judgments God, "to whom Vengeance belongeth," may have in Store for us, are yet hid in the unfathomable Depths of his unſearchable Coun-

ſels.——*Unhappy*——*wretched* BRITAIN, is in ſo deplorable a Condition, that ſhe has no natural, no human Means left to eſcape total Deſtruction.——If ſhe is preſerved in this Day of her Calamity, it can only be by the miraculous and merciful Intervention of Providence—of that Almighty and all-gracious Being, who has ſo often ſtretched forth his all-protecting Arm in the Defence of this once happy Iſland:——And the only way to draw down upon us his miraculous Mercy, is, to ſincerely and heartily Repent of our manifold and abominable Sins, and in all reſpects thoroughly to reform our Lives——Firſt then, let Bribery and Corruption, the Spring and main Source of that violent Torrent of Iniquity, which bears down all before it, be inſtantly expelled the Land. To this great Buſineſs let every Individual give his utmoſt help; and particularly let the *whole* Body of the CLERGY labour,——moſt aſſiduouſly labour in this good Work, and thereby endeavour to repair the Miſchief brought upon this Nation in conſequence of their Remiſſneſs in the Diſcharge of the Duties, of the miniſterial Function: For I am in my Conſcience convinced, that the exorbitant Growth of Bribery and Corruption, can be juſtly imputed to nothing elſe, ſo much, as to their great and inexcuſable Remiſſneſs and Neglect of their Duty. And whether the preſent melancholy State of this Country, is not the Effect of Bribery and Corruption, I leave to the impartial Judgments of others: And whether this moſt

blame-

blameable Omiſſion of the Clergy in not warning the People againſt a Crime too fatal to Religion, Liberty, Commerce, and national Honour, proceeds only from Indolence, or from Venality, or from both, I do not take upon me to determine; but however this is certain, let the Cauſe be what it will, the Effects to the People are the ſame; and the Difference only reſpects the Clergy: For the lazy Prieſt will be *damned* for not having *improved* his Talent; the venal Prieſt will be *condemned* to a greater *Damnation* for the Venality and Corruption of his Heart.

I cannot conclude this Exhortation, without offering up my moſt hearty and fervent Prayers to Almighty God, that he will be graciouſly pleaſed to grant his Grace and holy Spirit to every Individual of this ſinful Nation, to ſincerely and heartily repent him of his evil Ways, and to conform himſelf in all Things to God's holy Laws. That he will infuſe into the Hearts of all, that glorious Spirit of Virtue and Liberty, which inſpired the Breaſts of our great Forefathers, and which exalted the Reputation and Name of this Country, far above thoſe of all the Nations upon Earth. That he will be graciouſly pleaſed, "to "abate the Pride, aſſwage the Malice, and con- "found the Devices of our" inteſtine and foreign, "Enemies, and deliver us out of their Hands." And as the Ground-work of our thorough Reformation, that he will be graciouſly "pleaſed to illuminate all Biſhops, Prieſts and "Deacons,

" Deacons, with true Knowledge and Under-
" ſtanding of his Word, that both by their
" PREACHING and LIVING they may ſet it forth
" and ſhew it accordingly." And " To deliver
" them from all the *Deceits* of the *World*, the
" *Fleſh* and the *Devil*:" That at the ſecond Coming of Chriſt, " Attended by the holy An-
" gels" and ſurrounded with the whole Splendor and Glory of Heaven, when the LAST TRUMP ſhall call them forth from the dark and ſilent Grave, *to hold up their Hands*, at that great and tremendous Tribunal of the impartial and righteous Judge; who will make no Diſtinction of Perſons, and before whom the whole human Race of all Profeſſions and Denominations whatſoever, muſt appear, give an Account of their whole Conduct here, and be puniſhed to all Eternity for their Sins of Omiſſion, as well as of Commiſſion; they may eſcape that terrible Sentence, Chriſt himſelf has declared he will pronounce upon the Wicked, " Depart from me,
" *ye Curſed* into everlaſting Fire, prepared for
" the Devil and his Angels."

And at this moſt AWFUL——TREMENDOUS ——and IMPARTIAL TRIBUNAL,——" When
" the LORD himſelf ſhall deſcend from Heaven
" with a SHOUT, with the VOICE of the ARCH-
" ANGEL, and with the TRUMP of GOD, and
" the Dead in CHRIST ſhall riſe firſt,"——at this moſt AWFUL——TREMENDOUS——and IMPARTIAL TRIBUNAL, I ſay, muſt alſo *Archbiſhops*——*Biſhops*——*Deans*——*Canons*——*Prebendaries*

Prebendaries——*Vicars*——*Prieſts*——and *Deacons* ſtand in the laſt GREAT DAY; and there, ——*then Believing*, but I hope not *Trembling*, like the "Devils who *Believe* and *Tremble*," ſhall, according to their Actions in this Life, either Good or Evil, receive——a JUST and IRREVOCABLE SENTENCE.

And the LORD have Mercy upon their SOULS.

I am

GENTLEMEN,

Your moſt hearty Well-wiſher
and faithful Servant,

A Friend to RELIGION,
LIBERTY, *and*
PROPERTY.

FINIS.

Ex. J. Ch.